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No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

Linda L. Fogh, Pro se
Petitioner

v.

Circuit Court for Lane County, et al

On Revised Petition For Writ of Certiorari
To The Ninth Circuit
Memorandum Opinion,

Of

The Honorable Circuit Judges
J. Clifford Wallace
Ferdinand F. Fernandez
M. Margaret McKeown

Linda L. Fogh, Pro se
220 SW Clark Street B-304
Issaquah, WA 98027
(425)427-1426

QUESTIONS FOR REVIEW

This matter concerns an **impaired contract** involving the **extrinsic fraud** of lawyers, representing both of the parties, state judges and court clerks. The fraud produces an ex-post facto law and involuntary servitude that results in my bankruptcy and that is followed by **violations of the automatic bankruptcy stay**.

1. Is jurisdiction concerning constitutional questions established under 28 U.S.C.§1331, §1334(a)(b) §157(b)(5) and FRCP 60(b)?

2. Are all orders and judgments void following an impairment of a contract, or would there otherwise be involuntary servitude?

3. Who pays for the terms of an impaired contract when the debtor is the prevailing party in a prior consolidated action?

4. Is the debtor entitled to relief from extrinsic fraud and violations of constitutional prohibitions under Rule 60(b)?

5. Is there res judicata or claim and issue preclusion if there is fraud, impairment, and violations of the automatic stay in ongoing litigation?

6. Is there res judicata or claim and issue preclusion if there was no right to review in a prior civil rights action brought and served in the state court?

7. Is debtor entitled to relief from violations of the automatic stay?

8. Are judges immune when they violate constitutional prohibitions?

9. Did the petitioner have a fair trial before an unbiased judge when he dismissed her constitutional questions, barred her pro se pleadings, and eventually sanctioned her $18,698.98 by reassigning cases to himself?

List of Parties

Defendants Circuit Court For County of Lane and
The Honorable Judge Kip Leonard
The Honorable Judge Pierre Van Rysselberghe
The Honorable Judge Ann Aiken
The Honorable Judge Jack Mattison
The Honorable Judge Alta Brady
The Honorable Judge Maurice Merten
The Honorable Judge Ted Karp
Represented By: Asst. Attor. Gen. Cheryl Thompson-Merrill
(503) 378-4402 1162 Court Street NE
Salem, OR 97310

Defendants Lee Omlid, Attorney at Law
Lisa Gallo, Attorney at Law
Bruce Newton, Attorney at Law
John Henderson, Attorney at Law
William Bromley, Attorney at Law
Daniel Lindahl, Attorney at Law
Represented By: L. Feinstein, Vortman & Feinstein
206)223-9595 701Fifth Avenue
Seattle WA 98104

Defendant James Jagger,
Represented By: Phyllis Kamitsuka, J. DeVore
(541)484-9292 Luvaas, Cob, Richards, & Fraaser
777 High Street
Eugene, OR 97440

Chapter 7 Trustee Merrilee MacLean
Represented By: Diana K. Carey
(206) 223-1313 Karr Tuttle Campbell
1201 Third Street
Seattle, WA 98101

Defendant Errol McRill
Not Represented has not replied and shows no interest.
Jointly and Individually

Table of Authorities

United States Constitution and Federal Statutes

Article I. Sec 10. No bill of attainder, ex post facto law, or law impairing the obligation of contracts

Article III Sec 2. Controversies between citizens of different states"

Article IV. Sec. 1. Full faith and credit clause

Article VI. Supremacy Clause

Amendment I. Free of speech, press; right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Amendment V. Due Process

Amendment VII. In suits at common law

Amendment XIII. Sec 1. Involuntary servitude

Amendment XIV. Sec. 1. Equal Protection

42 USC §1981 Equal rights under the law

42 USC §1983 Civil action for deprivation of rights

42 USC §1985 Conspiracy to interfere with civil rights

42 USC § 1986 Action for neglect to prevent

42 USC § 1994 Anti peonage Act

28 USC § 453 Judge's Oath

11 USC Chapter 7 Bankruptcy

11 USCA § 363(h) Partners remain tenants in the partnership

Title 28 U.S.C. §455(a)(b)(1)(5)(ii) Judicial disqualification

Rule 12(b)(6) Summary Judgment.

28 USC §1331 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 USC §1334 (a)(b)

28 USC §157(b)(5),

Title 28 U.S.C.A. 1738 n 93

Oregon Constitution , Rules and Statutes

Article I Section 10 Administration of justice.

Section 12 Double Jeopardy

Section 17 Jury trial in civil cases.

Section 20 Equality of privileges and immunities of citizens.

Section 21 Ex-post facto laws;

Article IV Section 23. Local laws shall not regulate the Courts.

Article VI Section 10 County Charter (charter creates circuit court districts)

Article VII Section 9. Jurisdiction of circuit courts.

Sect. 15. County Clerk; Recorder; **Sect. 19** Official Delinquencies

Table of Authorities contin.

Oregon Statutes

ORS 203 County Governing Bodies to sue and be sued
ORS 203.030 Definition of "governing body
ORS 203.035 Power of county governing body
ORS 203.065 (2) The violator of a county ordinance
ORS 203.111 County Governing Body;
ORS 203.810 (1)(a) "County Law means a county charter
ORS 203.810(2)(a) circuit court jurisdiction
ORS 203.810(2)(b) The district attorney shall prosecute

Lane County Charter

Chapter II Sect. 5 Powers -.Chapter IV Sect. 19Admin. Dept.

Judicial Rules

JR1-101(A) (C) (D) (F);JR 2-102(A)(B); JR 2-107; JR 2-109

Oregon Rules of Professional Responsibility

DR 1-102 (A)(1(A)(2) (A)(3) (A)(4) (B) (1)

Oregon Rules of Civil Procedure

ORCP 1. Scope These rules govern
ORCP 1 B These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.
ORCP1 C These rules, and amendments thereto, shall
ORCP l D Defines Local Rules.
ORCP 2. There shall be one form of action
ORCP 7(E)Service
ORCP 53A Consolidation.
ORCP 53B. Separate Trials.
ORCP 69 Default Orders and Judgments.
ORS 30.265 (c) Any claim based upon the performance
ORS 30.275 Notice of Claim
ORS 87.430 Attorney's possessory lien.
ORS 87.445 Attorney's lien upon actions and judgments.
ORS 87.490 Priority of attorney's lien
ORS 87.460 Filing a notice of claim of lien on judgment for possession of Real Property;
ORS 87.465 Effect of failure to file notice
ORS 87.460 Tme required for foreclosure
ORS 88.010 Foreclosure for amount of debt.
ORS 88.040 Foreclosure
ORS 205.110 Powers and Duties of county clerk.
ORS 320.260 Definitions: (3) (4)(b) (6)

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Statement of Jurisdiction

Date of Ninth Circuit Court Order Denying Petition **En Banc Nov 14, 2000**. Petition is timely within 90 days of the Court's Memorandum, Dated **Sept 26, 2000**, and within thirty days of the Court's Order denying my Petition for Rehearing En Banc. They are prefaced on the District Court Order Affirming Decision of the Bankruptcy Court on **Feb 20, 2000** appeal no. C99-1427P from which I took a timely appeal to the Ninth Circuit. The Bankruptcy Court Dismissal is dated **Aug 20, 2000**.

Orders and judgments in the underlying consolidated causes of action concerning the contract resulting in bankruptcy: Order deferring the dissolution of the Partnership, **Nov.2, 1995**. Trial Judgment July 16, 1996; Appellate Memorandum **Mar 25,1998;** to my Motion Costs and Fees presented to the Court of Appeals on June 19,1998, granted on **Jul 1, 1998.** Supreme Court Order Denying Review **July 14,1998;** and denying my request for findings of fact and conclusions of law on **Oct. 28, 1998**. Following these orders was McRill's Motion objecting to costs filed **July 7, 1998**, not ruled upon until **Apr1,1999**, and McRill's order amending the final Judgments. on **Jan. 11, 1999**, and new judgments on **Jan. 21, 1999**, followed by two additional judgments on **Feb. 19,1999**.

State appeal against lawyer Bruce W. Newton dismissed in violation of the automatic stay on **Jan. 20, 1999** without a verbatim transcript or appellate briefing. Trustee abandoned the case on **May 12, 1999**; after which she compromised with Newton on **Sept 9, 1999.**

State case Fogh v. Circuit Court for Lane County, et al Order Denying Petition for Writ of Mandate for Compulsory Process by Force of Statute and all other requests for relief denied **Oct. 9, 1998**. Order denying Petition for Writ of Mandamus for emergency Prohibition and all other requests for relief also denied **Oct 9, 1998.** The trial court dismissed the case on **Dec. 3, 1998.** My appeal was dismissed without briefing on; **May 6, 1999**. It was then abandoned back to me on **May 12, 2000**. Other Bankruptcy Orders are listed and grouped together by their significance.

Statutory Provision conferring jurisdiction on the Supreme Court under Title 28 §1253, and Title 28 §2101.See also *Steel Co. v. Citizens for a Better Environment 118 S.Ct. 1003 (1998)*.

Jurisdiction of the Federal Court of First Instance under Article III, Section 2 "a controversy between citizens of different states." The matter concerns my bankruptcy. 28 U.S.C. U.S.C. 1331 and 28 U.S.C. 1334(a)(b) 28 U.S.C.§157(b)(5) and FRCP 60(b).*See Miller v. Stanmore 636 F2nd 986 (1981). See also In re Dow Corning 952034/ 2082/ 2084/ 2106/ 2107(6th Cir.1996), In Re LCO Enterprises 12 F3d 938 (9th Cir.1993) In re Feitz 852 F2d 455.457 (9th Cir. 1988) and Pacor 743 F2d 994* My complaint also meets the dollar amount for statutory authority.

Summary

1. My Petition for a Writ of Certiorari is about a court impaired contract resulting in involuntary servitude that culminated in my bankruptcy. The Court erred by failing to apply the U. S. Constitution, and the laws, and by ignoring the contract. I believe the court has abused its discretion by this dismissal ignoring violations of constitutional prohibitions, extrinsic fraud, lack of due process, and the violations of the automatic stay by giving the violations legitimacy where there are overriding considerations.[1]

2. On Dec.14,1994 Errol McRill and I came to a mutual agreement that we would dissolve our Partnership. Both so testified at a subsequent trial at which time I offered exhibits of those discussions. I immediately set about to obtain marketing appraisals from realtors for the home in question. At that time my equity was approximately $41,000, against McRill's $800. He also owed me approximately $21,000 plus interest for written cash loans.

3. McRill was operating a commercial used camera business open to the public in violation of the residential zoning laws; and the signed subdivision covenants. It completely destroyed any normal use of the home. His business was actually an unlicensed pawnshop

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[1] U.S. Const.. Article 1 Sec. 10. And Article VI, .Amendment V, VII, X,IV, 28 USC §453, 28 USC 1331, §1334(b) FRCP 60(b), 12(b)(6) 11 U.S.C.§363(h)
Steel Co. v. Citizens for Better Enviornment 118 S.Ct. 1003(1998) Edwards v. Kearzey SCt .(1877). Von Hoffman v. City of Quincy (4 Wall 535)In re William R. Abernathy 150 BR 688 (N.D. Ill 1993) Quare v. Entergy Operations, Inc. 118 S.Ct. 838 (1998). U.S. v. Castro. 243 B.R. 380 (D.Ariz.1999) Forester v. White 484 U.S. 2219 (1988) Frazier v. Moffatt 239 P2d (1951 Norfolk & Western Ry. Co. v American Train Dispatchers Ass'n. 111 SCt. 1156.(1991)

operating on a cash basis attracting the usual expected clientele drawn to a family neighborhood by his newspaper ads. His business violated the terms of our Agreement and our Homeowner's Ins. McRill reported net earnings of $2,686 in 1993. His request for new financing was flatly rejected by our lender in 1994. McRill would not agree to allow me to buy the home, nor would he agree to sell to a third party. He wanted me to sign over the title and remain on the mortgage. Doing so would have been contrary to the expressed intentions of our lender and did not dissolve the Partnership. It also left young neighbor children at risk, and both me and our home exposed and vulnerable to strangers and potential liability. I refused.

4. McRill also lied to the IRS to obtain unearned tax credits to which he was not entitled by claiming he paid them for a commercial location. These were expenses I was actually paying as my share. I found out that he had lied to our lender to get his name on the title by claiming he had more net income than he actually had. I also learned that he had lied to our insurance company claiming his father's California automobile was garaged at our home in Oregon to obtain reduced insurance rates. I was extremely concerned about the situation. There were no judgment liens against the home at the point of our agreement to dissolve, and the taxes and insurance were current, yet months passed without resolution.

5. When I became more insistent that we get the matter resolved, McRill became abusive. I certainly was not willing to get into any physical confrontation, and certainly not with a man twice my size. I warned him in writing after the first altercation. After the second episode, I obtained an Abuse Prevention Restraining Order that was issued to me for one year with the edict that I make his belongings available to him within seventy-two hours, and I did immediately offer them.

6. He refused to take any of it, and made me responsible for all in writing. None of these cameras had been physically inventoried, nor were they insured. I did not want the responsibility and had it professionally packed and shipped to a secured storage facility, and paid the $4,000 bill including a month's storage. The process took three days beyond the initial seventy-two hours because he did not

immediately respond to my offer to retrieve his things, and he had twenty thousand pounds of used camera junk stored in and around the home. Within twenty-four hours of receiving the claim check from the shipper, I handed it over to his lawyer. McRill stopped paying any portion of his share of the partnership expenses. I had a lawyer file a suit to dissolve the partnership including cash that he owed me. McRill filed his own lawsuit for "conversion" ($525,000). The Court of Appeals later reversed conversion in my favor.

7. Neither lawsuit was properly served according to ORCP 7E. Over my expressed objections the two cases were consolidated without the necessary motion required in ORCP 53A. The state law requires that there shall be one cause of action ORCP 2, but that was not enforced[1] My lawyer refused to respond to an answer-counter claim filed by McRill during the trial, and I was not allowed to testify to his new allegations. Damages were assessed against me for personal items that I paid to have packed and shipped to McRill or that he already had in his possession. Even though conversion was later reversed on appeal, the reversal did not include all of the damages assessed against me because of the multiple causes. McRill used these causes interchangeably to his advantage well into my bankruptcy by and through his lawyer, James Jagger.

8. I had the Abuse Prevention Restraining Order for three and one-half months, and it was dismissed with out a motion at James Jagger's request. It became the excuse for damages spanning a period of seven months that would eventually involve my entire equity in the home and my ongoing investment in the partnership. I asked the Oregon Supreme Court to review the appellate decision in the light of how this decision might affect other women who exercise their right to protection. Furthermore, Oregon law requires that in

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[1] ORCP 53A states the court may consolidate cases "Upon a motion..." ORCP 1B promises "these rules shall be construed to secure the just, speedy, and inexpensive determination of every action." ORCP 2 requires one cause of action. Oregon Constitution Art I Sec10 42 USC §1981, §1983, §1985, §1986, § 1994 Judicial Rule 1-101(A) (C) (D) F)JR 2-102 (A) (B) JR2-107 JR 2-109 See also Carey v. Phphus 98 SCt. 1042 (1974)

order for a person to be granted damages, he must prove his net earnings with reasonable certainty. McRill's net income with certainty was $2,600. He only provided the court with a bar graph of *gross projections,* three years out from the actual time in question. He failed to file any tax returns after 1993 and the trial took place in March,1996. The damages were based on the gross projections rather than his net earnings. McRill wanted to under report to the IRS, and overstate his "losses" on my account, so he supplied the Court with gross projections instead. I provided a list of cash McRill owed to me taking all of his payments into consideration. The trial judge would not recognize one $7,000 *repayment* that I listed, and reduced the total amount of what was owed by that amount. Any amount of money McRill made was by virtue of the cash I loaned to help him open a store, thus his so-called estimate of damages were actually based on the windfall that he never re-paid.

9. I pointed out the discrepancy to the Court of Appeals, but it would not grant a reversal on that amount. Instead, it reversed in my favor a *different* amount of $7,767 related to conversion. I am actually owed ***both*** sums and showed proof for ***both***. If McRill had been ordered to pay ***both*** amounts, ***both lawyers*** would have been out of luck. Each lawyer wanted $23,000 (equal shares of my home equity), thus the contract was impaired. In order for both lawyers to get their wish, both clients had to prevail thus the need for more than one cause of action. There was no way to make such a division without using my ongoing investment, also handpicking a realtor, determining the price, and controlling the terms by disregarding the contract. This is precisely what eventually happened.

The Supreme Court denied review in July 1998, and my request for findings on Oct 28, 1998. McRill filed two more motions. One been pending since July 7, 1998 to reconsider costs and fees in the Court of Appeals. That motion was finally denied in April 1, 1999. McRill's second motion would change the final judgments. That was granted after my bankruptcy (order Jan 11, judgment on Jan 21, 1999). Two more final judgments switched the Jan 21 judgment, because even the court was confused about whether I was the plaintiff or defendant, and therefore was not sure whether to charge me as a debtor, or creditor. To cover up the confusion, the cases were

separated and the new judgment was filed under McRill's separate case for conversion.

10. The trial was scheduled on my complaint to dissolve the Partnership. McRill's case was consolidated with mine. The trial was heard after the lawyers switched causes of action by amending complaints one week before the trial. Newton changed my complaint from breach "on account" to breach for "conversion." McRill filed an Answer Counter-claim for breach on account of conversion two thirds of the way through the trial. He also kept his separate tort for conversion. The criminal abuse restraining order was used as an excuse to assess damages in an array of confusing trial judgments. The court ignored McRill's abusive treatment, as the reason for the Abuse Prevention Restraining Order, ignored his violations of the Partnership Agreement, and the zoning ordinances; ignored his then massive outstanding debt to the Partnership, tax fraud, refused to hear my testimony and then concluded:

> "I have come to the conclusion that both parties materially breached the partnership agreement, one gradually and one abruptly. One purpose of that agreement, hereinafter referred to as the PA, was to provide a residence for each party. Implicit in that is that each should have the right of quiet enjoyment of that residence. **As Mr. McRill's camera business grew, the activities that it generated had an increasingly adverse impact upon Ms. Fogh's ability to reside normally in the residence, and as to her, ultimately destroyed a primary purpose of the partnership. This constituted a material breach by Mr. McRill, and occurred well prior to his eviction in May, 1995.** It entitled Ms. Fogh to seek some remedy for the breach, such as a suit to dissolve the partnership, but it did not entitle her to proceed as she did."

11. In other words, all of his violations combined were not as bad as my refusal to be mistreated by obtaining a valid order to prevent it. Convenient logic, considering all of the money used for damages was mine. No one has ever been able to explain why his illegal business should take precedence over the legally binding contract or a valid court order.

12. All of the money assessed against me including attorney's fees for having a valid restraining order was intended to be deducted from my investment in the contract.[2] I was both awarded costs, and assessed damages under my own case to dissolve the Partnership and I was assessed damages under McRill's case.[3]

13. The lawyer who represented me in my appeal, Daniel Lindahl never raised the questions of the impaired contract or lawyer fraud to the Court of Appeals. The appellate judges raised the question of having more than one cause of action, but they also ignored the act of the impairment itself. Since all of the lawyers were involved they themselves would certainly not draw attention to their own fraud. Bruce Newton, my own trial lawyer brought a motion to dissolve the partnership under McRill's separate case and the order deferring the dissolution is signed under McRill's case as a separate case. I was unaware of the deception until sometime after the appeal had been heard.

14. The costs and fees that I was eventually awarded on appeal are also listed under the terms of the contract. My own trial lawyer had sued both partners, for his pre-judgment real estate lien for the second half of his bill. He obtained a judgment against me, and then dismissed McRill as the responsible party. When I applied for the terms of the contract, both lawyers suddenly realized that McRill owed me approximately $40,000 for costs and fees plus damages and all of the other terms as well, so they shifted my favorable cost award to McRill's second cause of action by separating the cases that they initially committed fraud to consolidate. They also eliminated the amount $7,767 conversion reversed in my favor.

15. Jagger followed with his Motion on Dec.3,1998 to alter the final judgment taking the responsibility of the sale of my home away from me. He wanted to select the realtor (**Gail Newton**), decide the price

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[2] ARP Films Inc. v Marvel Entertainment Group, Inc 952 F2d 643 (2nd Cir. 1991)

[3] Allen v. McCurry 449 U.S.90 (1980), Clements v. Washoe No 9316693 (1995) U.S. v Kominski 487 US 931 (1991) US v Ex Rel Anderson v. Northern Telcom.Inc. 52 F3d 810 (9th Cir. 1995) Poindexter v. Greenhow 114 U.S. 270 (1885) Peters v. Bowman 98 U.S. 56 (1878) Mississippi University for Women v. Hogan 458 U.S. 718 ((1982). Mitchum v. Foster 407 U.S. 225 (1972)

(well below fair market value, and ignore the repairs and improvements I was forced to make) and handpick the buyer (who waited in the wings in Chicago for fourteen months). On Jan. 11, 1998, three days after my bankruptcy, a hearing took place in which the final judgment was finally changed to suit Jagger. On Jan 21, 1999 the court filed a judgment order granting McRill the responsibility to sell my home. The court also granted attorney's fees. There is no question that McRill and his lawyer had by then received Notice of Bankruptcy. The court was so confused by the consolidation and the subsequent case *separation*, that it entered the judgment in my favor, and had to again change the judgments Pro Tunc in February to get Jagger positioned to receive the bulk of my equity.

16. When it came time for the court to consider the terms of the contract, it decided that I was not entitled to reimbursement for money I was forced to spend over the course of litigation. In other words, I was prevented from selling my home until both the City and County had the opportunity to get their cuts, a new sewer, and substantial taxes. Other maintenance, necessary repairs and upkeep that I had paid, were ignored or denied outright. Furthermore, the trial court dictated what future expenses, repairs, and improvements *would* be paid out of the sale of the home ordered necessary by a realtor, rather than me as the rightful owner. The court would defer to *McRill's realtor* who was hand picked by Jagger as it turned out. The court would not address the liens, nor remove them so I could sell the home. I was literally boxed in by corruption and driven into bankruptcy.

17. Trustee recommended to Bankruptcy Court, that my home be sold based on a price five years below fair market value that did not cover all of the liens. Together, with the help of Key Title Co., whitewashed the title, and then ordered the home sold "free and clear of liens" *ignoring* the contract. The Court also ordered a compromise with Bruce Newton giving him preference over all of my honest creditors. I would later learn that my assigned bankruptcy judge is ***related to Bruce Newton's lawyer*** Larry Feinstein, who represents him in this Petition. Judge Thomas Glover reassigned this matter to himself, and dismissed it on August 13, (order filed Aug. 20) and

barred my pleadings. This very convoluted situation, began with lawyer fraud, and court corruption with only one goal and that was to manufacture some excuse to steal my equity.

18. McRill, through his lawyer, James Jagger, returned to court three times *after* my bankruptcy was filed and altered the judgment.[4]

19. Neither I, nor McRill was ever properly served according to the Oregon Rules. Yet, the issues were decided by the court on the basis of apportioning my ongoing equity in the impairment, not on the issues themselves. The lawyers arranged the issues and briefed the appeals based on the sole consideration of juggling my equity.[5]

20. A few weeks after I commenced legal action to dissolve the partnership I received a **written offer** on Aug 2, 1995 for the appraised value with income over thirty years a value in excess of $301,000. The lawyers ignored it. I lost that offer and a second identical one presented a few months later. I notified Bruce Newton of my objections to a case consolidation before it occurred and referring to the offer, and he ignored me. He connived with James Jagger and signed a stipulated order to consolidate my complaint to dissolve the contract with McRill's tort for conversion, by obtaining an order without the required motion [6]

21. There was no reason to delay the sale, especially one that would have produced income and ended the controversy. The lawyers were well informed, yet, they went out of their way to obtain a Stipulated Order of Consolidation under my case.[7] Then they machine copied the order scratched out my case and filed it as a new order under McRill's case using the same signature page. I asked to see the order of consolidation. The lawyers drafted a third

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[4] 11 U.S.C. §362(a)(1)(2)(3)(4)(5)(6)(7), 28 USCA1738 n 93

[5] In re Kitchen Equipment Co. of Virginia, Inc. 960 F2d 1242 (4th Cir. 1992) In re Gruntz 202 F3d 1074 Cal.9th Cir.2000) In re Laing 945 F2d 354 (10th Cir.1991). Arizona v. California No. 8, S.Ct June 19, 2000, and Catlin v. United States 324 U.S. 229 (1945) Hoffman Estates v. The Flipside 102 SCt1186 In re Elmar Lee Pettit No. 9915413 July 6, 2000 (9th Cir.)

[6] Scott-Harris v.City of Fall River WL 9102 (1st Cir. 1997) Forester v. White 484 U.S. 2219 (1988) ORS 205.11, ORCP 53A, B Professional Responsibility DR 1-102, (A)(1), (A)(2), (A)(3), (A)(4)

[7] Elliott et al v. Peirsol et al Supreme Court 1828

order. This time they typed McRill's[8] case number reversing their own signatures deleting the last line, they supplied the judge's signature including the same date, and then **faxed** it to me at Washington. See *United States v. London 714 F2d 1558 (1983)* The document is again typed on the opposing lawyer's stationery. My lawyer, Bruce Newton, represents himself as the "defendant's attorney" in all three orders. I was staying with my sister's family in Anacortes, Washington and assumed all of her care during her final illness, and had no choice but to accept what Newton represented to me. I did not have access to court records. Nor, did I have the understanding of the mechanics involved at the time. However, the consolidation had no logical basis even then, and I strongly objected to it well in advance.

22. I have timely provided many examples of other forged court orders, missing and altered records, manufactured evidence, and materially altered transcripts while represented by well paid lawyers. There are even documents file stamped with the wrong *year*. Newton tried to extort all of the attorneys' fees from me before the trial began in exchange for the dissolution of the partnership; at that point I refused. Newton signed a jury waiver without my knowledge or consent only minutes before the bench trial took place.[9] There is at least one ex-parte conversation between him and the judge which Newton confirmed in his own writing that the judge laughed and referred to the case as steer manure in the vernacular.[10] The judge arrived at his decision to assess a variety of damages against me that he claims, were based on "muddy facts." On the other hand, the judge would not allow me to testify fully and completely, and these muddy facts drawn from a sham trial have been the basis for dismissals, denials, and altered judgments ever since.

23. These defendants do not deny the proof of my allegations of fraud, nor have they been able to offer any proof to the contrary. The best the court has been able to offer as reason for dismissing my

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[8] Needer v. U.S. 119 S.Ct. 1827 (1999) Evanston Bank v. Conti Commodity Services, Inc. 623 F Supp 1014 ND Ill 1985).

[9] Oregon Const. Article I Sec.15, 17, 20, 19, 21 White v White 925 F2d 287 (9th Cir. 1991). Carey supra In Re LCO Enterprises 12 F3d 938 (9th Cir.1993

constitutional questions is a procedural rule - regarding notice to my creditors which I indeed gave and proved I gave.[11]

24. I informed trustee of the case histories. She knew I had sued Circuit Court for Lane County, et al for constitutional violations; the matter had been dismissed and was pending appeal. She also knew my former trial lawyer had tied up the property with his prejudgment lien, and more than a year later, sued both partners. That too was pending appeal. She admitted that I had reason for my complaint, and offered me a paltry settlement of $25,000 that I refused.

25. The violations of the stay gutted my appeals. Trustee and her Lawyer, Diana K. Carey, had their own reasons for ignoring the violations. Both have a vested interest in malpractice insurance in the State of Oregon, and my equity was now within their grasp. They abandoned the causes of action as burdensome and of inconsequential value, and then faked a title report re-arranging the liens. They included an extra lien for Bruce Newton. *The Court then ordered a compromise ($12,500) between the trustee and Newton after trustee's abandonment. The compromise reduced the amount Newton claimed I owed by eliminating the phony lien.* Every judgment in the State of Oregon was altered in violation of the stay. Two appeals had not been briefed.[12] One appeal (against Newton) was stymied because I was denied a verbatim transcript. The pages were numbered incorrectly and could not be used as a reliable reference. I had a motion pending in the trial court to correct the transcript when my appeal was dismissed after my bankruptcy.

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[11] Browning v. Navarro 826 Fd2 335, 342-45 (5th Cir. 1987) cites Hazel-Atlas Glass v. Hartford Empire Co. 322 U.S. 238 64 S.Ct. 997, 88 L.Ed. 1250 (1944); U. S v Throckmorton SCt. (1878). Field et al v. Mans No. 94-967 S.Ct. (1995)_United States v. Bertrand CA6 Ky 1980 Cert. Denied 101 United States v. London 714 F2d 1558 (1983)

[12] 11U.S.C.§365(a) (c)(1)(A)(B)(2) Elled v. Casey 487 US 131 (1988) ORS 320;.260; 30.265 (c), ORS 203, ORS 203.030, ORS 203.035; 203. 065 ORS 203.810 (1)(a), ORS 203.810(2)(a), ORS 203.810(2)(b) ORS 30.275, (1)(2)(3(4)(5) Lee Pettit Case No. 9915413 (9th Cir. July 6, 2000.) Elliott et al v. Peirsol et al Supreme Court 1828 ORS 205.110

26. There were so many due process violations in Lane County including theft of the records, that I filed a complaint against Circuit Court et al) That led to more violations. I filed two Writs of Mandamus in the Supreme Court asking that it require Circuit Court to follow the law. They were denied "and all other requests for relief." Less than two months after the Supreme Court denied my request, Circuit Court dismissed my complaint against it brought on constitutional grounds on the basis of Eleventh Amendment the court claimed that the "fatal flaw" was that I failed to give the State Notice. I did, in fact, follow the rule and give notice before I filed my complaint. I appealed. The appeal was dismissed in violation of the bankruptcy stay six days before it was abandoned back to me for prosecution.

27. All of the constitutional issues I have raised have been dismissed. I first brought the matter to Federal District Court, Western District of Washington in 1997. I did not know about the impaired contract at that time, but was aware of a lack of due process. My complaint was dismissed without ever issuing summons. I bought a second complaint in the State Court. That was dismissed on State grounds and I appealed. My appeal was also dismissed in violation of the automatic stay. "Unreviewed findings of a state have no preclusive effect on Federal procedure." *Astoria Fed. Savings & Lone Assn. v. Solimo 501 U.S. 104 (1991)*

28. I tried to remove the cases to a more neutral setting. The removals were dismissed, but the cases remained viable. I filed appeals in both forums. Then my appeals were dismissed. State dismissed them in violation of the stay, and the Ninth Circuit forced me go to the time and expense of briefing three removal dismissals and then dismissed them all on jurisdictional grounds without requiring any briefing from the appellees.

29. I filed this lawsuit to avoid fraud-based liens and for payment on the terms of the impaired contract after trustee abandoned the causes of action back to me. My claim for payment on the contract was denied, the fraud-based liens were ignored, and I have even been denied my Declaration of Homestead. I followed both California and Oregon laws and the tax code when I reinvested the money. The court decided that I "abandoned" my home despite the facts that, I

had been locked out of my home and I continued to pay all of the bills up to the moment of bankruptcy. Bankruptcy Court would not accept proof of my ongoing efforts to defend my home and pay the bills.

30. Bankruptcy Court issued summons in this matter and then on Aug 13, 1999, it dismissed my complaint, and barred me from filing any other pleadings. We come now to the reasons given for that dismissal as follows.

31. "The State of Oregon has not consented to the jurisdiction of this court."

32. Rebuttal 1: Jurisdiction is conferred by the grant from U.S. Congress in Section1334(b). See *Dow Corning In re Dow Corning 95-2034 /2082/ 2084/ 2106/ 2107(6th Cir. 1996). See also Celotex v. Catrett 477 US 317.*

33. Rebuttal 2: Title 28 U.S.C.A.1738 n 93 states: "**Actions** taken in violation of the automatic stay are **void**" I have no way of telling whether there are new liens against me after my bankruptcy, or whether I still have positive judgments abandoned in my favor that hinge on my investment in the impaired contract, or whether they are ignored as simply void. Furthermore, the Lane County Court is so utterly corrupt that there would be futile to return to that corrupt court for determination. My bankruptcy is the defining point for addressing the liens. It is not enough to simply sell the home free and clear of liens. I have a recorded contract and it remains a legal cloud on the title until its terms are met. I want my home and my fine credit history returned to me and I certainly want to see my honest creditors paid in full.

34. Rebuttal 3 There is no constitutional provision or authority under the Bankruptcy Code for the sale of property that belongs to a partnership 11 U.S..C. §363(f) states " only **if non-bankruptcy law** permits sale free and clear. **11 U.S.C. §363(L) states "notwithstanding any provision in a contract."** The court acknowledged the contract to defer its dissolution. It required my ongoing investment to enter its judgments, now I expect it to

recognize the terms of the contract. The trustee abandoned the assets in the consolidated cases and included therein is the impaired executory contract. ***In re Manning 37 BR 755 1984):***

> *"What both parties have overlooked is the primary rule in bankruptcy cases, in considering a problem involving partners or partnerships, that* ***a partnership is a distinct legal entity*** *separate and apart from the partners who formed it. Upon dissolution, the partners remain tenants in partnership pending windup and termination. Partition of partnership can only be made when there are no partnership debts owing to third parties."*

35. Bankruptcy court has attempted to wash out *McRill's responsibility* to the partnership through my bankruptcy. On the other hand, it was willing to devalue my home, and then give preference to one of the crooks responsible for the impairment. That places the burden squarely upon the shoulders of my creditors including a Federal Savings Bank. The Bankruptcy Court failed to fully investigate my objections.. ***Field et al v. Mans No. 94-967 S.Ct. (1995)*** states:"Vacated and remanded concerning the issue of a debt resulting from fraud." *"The* ***Bankruptcy Court's*** *reasonable person test entailing a duty to investigate clearly exceeds the demands of the justifiable reliance standard that applies under §523(a)(2)(A)."*

36. Rebuttal 4: A judge as a State Actor is not vested with the sovereign immunity granted to the state itself.[13] The defendants were sued as individuals. Furthermore, State actors need not necessarily be state officials. Bankruptcy judges are equivalent to state judges.

37. Rebuttal 5: In 1994 the Ninth Circuit said "If a Judgment is void relief is not a discretionary matter; it is mandatory."[14] In addition, five months ago the Ninth Circuit differentiated between

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[13] Rolfe v. State of Arizona 578 F.Supp. 987 (DC.Ariz 1983) Rutledge v. Arizona Bd.of Regents 660 F.2d 1345 (9th Cir. 1981) Cert. Granted Kush v. Rutledge 458 U.s. 1120, 102 S.Ct. 3508 Affirmed 460 U.S. 719 affirmed Atkinson-Baker & Assoc. v. Kolts 7 F3d 1452 (9th Cir. 1993 Ex-parte Young 209 U.s. 123 (1908

ministerial acts and judicial discretion by the signing of an order. [15] Today, the Ninth Circuit is willing to overlook the Federal Law, void judgments and mandatory relief, by its own definition of what constitutes judicial involvement by the signing of an order. It is willing to exercise random arbitrary discretion to get judges off the hook because I have sued them for constitutional violations. Why should they and lawyers, by their proximity to the judges, be given special treatment as an invidious-based class?[16]

38. I filed for bankruptcy on Jan. 8, 1999. The pronouncements *In re Laing*, and the Ninth Circuit explanation *In re Pettit* do not square with ignoring the numerous violations of the stay in this bankruptcy and then abandoning them as inconsequential in value. The court impaired the contract. After I was forced into bankruptcy, the court turned around and said, "Oh well, just forget the contract and the liens, and sell Fogh's home free and clear." Then it used my investment to enrich lawyers who initially caused the impairment.

39. Bankruptcy Judge Steiner who denied my Declaration of Homestead. He ruled that I failed to file a declaration of "non-abandonment" some time between 1996 and bankruptcy. The U.S. Constitution requires that States give difference to the public records of other States. I recorded the contract for the same purpose that I recorded my Declaration of Homestead, and the judge denied both. Given the fact that he does not recognize U.S. Constitution, the contract, or the Declaration of Homestead it is very difficult to believe that he would have a recognized the Declaration of *Non*-abandonment. **Judge Steiner also ordered the compromise that benefited his relative lawyer, Larry Feinstein, who represents my former lawyers in this Petition.** It seems pretty clear that my equity is earmarked for the payment of what began as an impaired contract and is now currency for a cover-up. Chief Bankruptcy Judge Glover took the cases by his own reassignment and barred my pro se pleadings in his court. The bar coincides with his desire to be

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[14] Orner v. Shalala 30 F3d 1307 (9th Cir. 1994) In re Gruntz 202 F3d 1074 Cal.9th Cir.2000) In re Laing 945 F2d 354 (10th Cir.1991).

[15] See In re Lee Pettit Supra. 11 U.S.C.§523(c)(1)

[16] Eggar v. City of Livingston 40 F3d 312 (9th Cir. 1994)

involved in my complaint against the trustee leading to his sanctions of me.

40. **Rebuttal 6**: Consent is no longer a bankruptcy requirement.[17]
41. **Rebuttal 7**: The State of Oregon is not named in the suit.[18]
42. **Rebuttal 8**: Whatever immunity the State might have does not apply to bankruptcy violations.

43. "With respect to the State of Oregon, and the judicial officers acting within their authority as judges, this court has no jurisdiction."

44. **Rebuttal 1**: The judicial officers do **not** act within the scope of their authority when they violate a constitutional prohibition. They arranged an ex-post facto law subjecting me to involuntary servitude. One hundred and fifteen years ago the Supreme Court told Lane County "...anything in the constitution of laws of any state to the contrary not withstanding." Their actions were not authorized by the state. They were random unauthorized acts of individuals bent on property theft.

45. **Rebuttal 2:** In its dismissal, the Court made findings well beyond "no jurisdiction." Jurisdiction is inferred by the Court's actions and Federal jurisdiction is conferred by 28USC.§1331, §1334(a)(b), §157 and FRCP 60(b).

46. **Rebuttal 3.** My bankruptcy is filed in Seattle, WA., and I can not Afford, or see any point in traveling to Oregon where I have been told that all other relief will be denied. The initial lawsuits were never properly served, and there was no motion to consolidate, but there is an impairment. Jurisdiction never actually existed in any

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[17] 28 USC §1334(a)(b)In re Feitz 852 F2d 455,457 (9th Cir. 1988) and Pacor 743 F2d 994 see also Dow Corning In re Dow Corning 95-2034/2082/2084/2106/2107(6th Cir. 1996) Celotex Corp. v. Catrett 477 U.S. 317 (1986

[18] In Poindexter v. Greenhow 114 U.S. 270 (1885) This case outlines the perimeters for a state action.

sense. Each of these acts were administrative in nature where I was singled out for different treatment.[19]

Rebuttal 4. The Court does not have the authority to override U.S. Constitution. [20]

47. "Plaintiff is barred from litigating the issues she presents because they have already been raised and resolved in other courts."[1] See Transcript On Aug. 13, 1999, The Bankruptcy Court stated:

> "I will dismiss your ***cases,*** and I will also, because I can tell by your attitude, bar you from filing any other pleadings before this Court except such actions as you may wish to file with respect to the appeal of my decision here today, but I don't want to see a pound of paper from you as in the past."

48. Rebuttal 1: The Cases were abandoned back to me. The Judge Glover dismissed the abandoned cases *retroactively through* this case. If he could do that, then it could just as well have taken the time investigate the fraud. Instead, he dismissed my complaint and barred my pleadings. Judge Steiner ignored the violations of the automatic stay, and ordered my home sold. He denied my twenty-three year old Declaration of Homestead, and ordered a $12,500 compromise to be paid out of my equity that benefited his relative, all was done on the premise that my property is "inconsequential value".

49. Any American going through this ordeal would take definite stand; however, I was certainly not disrespectful to the court. Attitude aside, I have a constitutional right access to the courts, to represent myself, and to have my pro se pleadings liberally construed. I am entitled to due process before the taking of property[21]

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[19] Neely v. Feinstein 50 F3d 1502 (9th Cir1995).

[20] 46 Am Jur 2d§539 Estoppel Identity of Issue Test

50. I was barred from filing any other pleadings, essentially shut out of a court of law for filing a justifiable complaint, one that had not been addressed at any time prior to my bankruptcy.

51. Rebuttal: 2 The reasons for *this* dismissal ignore the new allegations. The Court claims they can ***only*** be addressed in ***Oregon*** - where Judge Ann Aiken who signed the initial case consolidation. now sits as a Federal Judge. Judge Glover came to that conclusion *after* my claims had been dismissed and abandoned by both the State and the Bankruptcy Court.

52. "Plaintiff has already raised these issues in other courts, her attempt to do so again in this court is frivolous."

53. Rebuttal 1: The contract was certainly worth the court's notice to impair in 1995 , however, the issue of the act of impairment was never raised by any lawyer who represented me because they were all involved in the fraud. If the contract was valuable then, it is no less valuable now.

54. Rebuttal 2: The state appeal against Circuit Court for Lane County would have addressed the issue of *pre-judgment* lien for attorney fees that was the impetus for impairing the contract and tying up the property making it impossible to sell. That appeal was also dismissed ignoring the stay.

55. Rebuttal 3: The loss my thirty-year home equity, income, future security, and impeccable credit culminating in my *bankruptcy* are *not* frivolous to me. Fifty thousand dollars in paid legal fees did not protect me from their combined fraud. The defendants have the best representation money can buy *to protect their insurance.*

56. Rebuttal 4: The dismissal of this action pointedly ignores the constitutional questions I raise as well as my right to litigate them.

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[21] *NACCP v. Meese 615 F.Supp 200 (D.D.C. 1985),Faretta v. State of California 95 S.Ct. 2525 (1975) Ortez v. Washinton County 94-36036(9th Cir. 1996), In re Maurice & Marie Ozer Bankruptcy No. 893-87027-478 E.D. N Y (1997)*

57. The District Court Dismissal follows: **"Oregon Judicial Department is a State Agency and by suing the Circuit Court Ms. Fogh is suing the State of Oregon. Suit is barred by the Eleventh Amendment." Citing Pennhurst State School & Hospital v. Halderman 465 U.S. 89, 100, 104 S.Ct. 900 79 (1984).**

58. **Rebuttal 1:** The suit does not name the State of Oregon and Penhurst does not comport with the facts of this case. Penhurst is an individual ***state*** resident who sued a ***state*** hospital in a ***federal court*** to bring the hospital into compliance with ***state law*** thus bringing a constitutional limitation of sovereign immunity into consideration.

59. Conversely, this complaint involves ***federal questions concerning bankruptcy,*** administrative and ministerial acts of fraud and an impaired contract. These are all questions properly raised for the first time in the ***federal bankruptcy court.*** The prohibitive conduct in this case was not authorized by the State. It was a private random act under color of law and color of authority and conveniently overlooked by the trustee, and Bankruptcy Court. Furthermore, the court found that I am not an Oregon resident more than a month before this case was dismissed when it denied my homestead.

60. **Rebuttal 2:** The **Eleventh Amendment** does not immunize an individual's unconstitutional behavior.[22]

61. **"Court affirmed dismissal of judges named in this action. Individual judges are named as defendants "jointly and individually. Acts complained of occurred when judges were acting in their official capacity as judicial agents of the State. Court claimed no demonstration that judges were acting in the clear absence of all jurisdiction. Judges are absolutely immune from this lawsuit." Citing Stump v. Sparkman, 98 S.Ct. 1099 (1978)**

62. **Rebuttal 1**.: See Hafer v. Melo 112 S.Ct. 358(1991) The Court

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[22] Ex Parte Young 209 U.S.123 (1908) also cited in Puerto Rico Aqueduct & Sewer Auth. V. Metcalf & Eddy, 506 U.S. 139 (1993)
Title 11 U.S.C.A. §362 Auto. stay Title 28 U.S.C.A.1738 n93. See also U.S. v. Castro. Supra.

said, "State officials were held subject to personal liability for damages under 42USCS§1983 based on official acts where §1983 actions were brought against officials in their ***individual capacities*** within the meaning of §1983. State officials who deprive people of their civil rights under color of authority exchange their official identities to personal capacity to be ***sued as individuals***. Consequently they lose Eleventh Amendment immunity." As previously noted by the Supreme Court, §1983 creates a species of tort liability that, on its face admits of no immunities.[23]

> "...very purpose of (Title 42 U.S.C.§1983 was to interpose the federal courts between the State and the people, as guardians of the people's federal rights - to protect the people from unconstitutional action under color of state law. "whether that action be executive, legislative or **judicial**."[24] Hafer supra.

63. <u>Rebuttal 2</u>.: <u>Stump</u> does not comport with the facts of this case. A mother with a retarded minor daughter requested an order that the girl be sterilized. Unlike this matter, there was no constitutional prohibition, state or federal law, at that time to deny the request, so Judge Stump, the judge who signed the order for sterilization, was later granted immunity as a jurisdictional matter. However, the U.S. Constitution and the federal law does not afford *any* judge absolute judicial immunity. This is especially true when he or she violates a clearly established constitutional prohibition.[25] There is no justification for the constitutional violations in this matter, nor were any ever offered. The initial fraud and the court orders speak for themselves. A judge does not have the authority to act in defiance of the U.S. Constitution.[26] Owen explains judicial immunity from liability for damages for acts committed ***within their judicial jurisdiction***. Acts committed in violation of a constitutional

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[23] Scheuer v. Rhodes. 416 U.S. 232 (1974) Wyatt v. Cole 504 U.S. 158 (1992)

[24] Pullium v. Allen 466 U.S. 522(1984)

[25] Eggar v. City of Livingston 40 F3d 312 (9th Cir. 1994)
Frazier v. Moffatt 239 P2d 123 (1951) Neely v. Feinstein supra.
Yartzoff v. Thomas 809 F2d 1371, (9th Cir.1987 cert. den.
Yartzoff v. Reilly 498 U.S. 939(1990).

[26] Article VI Supremacy Clause.Scheuer supra_ Wyatt v. Cole 504 U.S. 158 (1992)
Owen v. City of Independence 445 U.S. 622(1980)

prohibition are not judicial acts. " Equal protection clause requires that all persons similarly situated be treated alike,"[27]

64. *Bradley v. Fisher 1868* is often cited as a precedent for granting absolute judicial immunity. However, *Bradley* was decided on the basis of the *lack of Jurisdiction* of *both plaintiffs* in two separate cases. Judge Fisher disbarred Bradley without giving him notice or an opportunity to be heard. On the other hand, Bradley sued Fisher in the wrong court. The Supreme Court resolved the matter by first reinstating Bradley's license to practice and then dismissed the complaint against Fisher. In its dismissal, the Court mentions the *tradition* of *British Common Law of 1609* that is not a legal precedent founded on the basis of the authority of the United States Constitution. In 1609, a case (Floyd and Barker) was brought in the King's Court that purposed absolute judicial immunity to protect the ***King*** from embarrassment on the theory that the ***King*** can do no wrong. Bradley mentions Floyd. Since then, the Court has consistently tied absolute judicial immunity to jurisdiction in complaints involving judges (citing Bradley and its prodigy) by implying each instance somehow answers a question of jurisdiction. However, we have no kings in the United States of America, instead, we do have a United States Constitution, and a Civil Rights Act. When a judge violates a constitutional prohibition jurisdiction is automatic. Since 1938, Courts are required to apply federal common law to cases governed by the U.S. Constitution and Acts of Congress see *Erie R. Co v Thompkins 304 US 64 (1938)*. British common law does not apply.

65. Even British common law relies on the concept of one violation. Lord Mansfield in writing for a unanimous court, held that the sale of four loafs of bread on Sunday in violation of a statute forbidding such sale constituted one offence, not four. According to Lord Mansfield: "If the Act of Parliament gives authority to levy but one penalty there is an end to the question...." see Crepps v. Durden 2 Cowd., 64-098 Eng. Rep. 1283 (K.B.1777),See Whalem v. U.S. 445 US 684 100 SCt 1432 (1980) In my situation, there were multiple

[27] City of Cleburne v Cleburne Living Ctr 105 SCt 3249(1985)

penalties based on more than one cause of action with no end to the question employing an ex-post facto law.

66. *If* absolute judicial immunity *were* to exist, then the public is misled whenever a state or the Federal government accepts a filing fee for a lawsuit that names a judge as a defendant. The Court has denied judicial immunity in many other cases where there is a direct violation of a constitutional prohibition by a judge. There can not be both *absolute* judicial immunity some of the time, and no immunity all of the time. There must be consistency in the law. The inconsistency has caused judges to believe they are above reproach in all situations.

> "No man in this county is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it."*Butz etal vEconomou et al 438 U.S.478 (1978)*

67. A judge may not use his power to violate the United States Constitution. He gives his oath to support it in exchange for his place on the bench and the public gives its trust that he will keep his word.

68. The Court remains silent on its reasons for dismissing the defendant lawyers other than to rely upon preclusion that does not exist under these circumstances. Ignoring its own decision in ***Conner v. Santa Ana 897 F2d 1487 (9th Cir. 1990)*** announced just ten years ago, the Ninth Circuit said: "Private parties acting under state law are not entitled to immunity." Today they have been granted absolute immunity under color of law with no reason.

69. Citing Clements v. Airport Authority of Washoe County 69 F3d 321 (9thCir.1995) Rennie v. Freeway Transport 294 Or.319 (1982) 319 656 P2d 919 (1982) "Ms. Fogh is attempting to litigate issues that were already raised and resolved by the other courts."

70. Rebuttal 1: A federal court is required to give a state court judgment the *SAME* preclusive effect that would be granted to the judgment in the state's own courts. The State did not give preclusive

effect. The Circuit Court ignored the amount reversed in my favor, and then changed the final judgments that granted me the responsibility to sell my own home. Furthermore, the state violated the automatic stay in order to dismiss my two pending appeals.[28] Instead, Bankruptcy Court has ignored the violations and gives the lawyers a blank check to violate the U. S. Constitution by simple proximity to a judge, and the judge with that of the State. The Court offeres the defendants a method of escape by substituting the state for the bad acts of the individual defendants to protect them from their own liability.[29] Moreover, the act of impairment itself was never raised in any court at any time until now.

71. *Poindexter v. Greenhow 114 U.S. 270 (1885)* a defendant tried to substitute the state in his place, or to justify his conduct by authority of the state. He tried to defend on the ground that the state had adopted his act and exonerated him. The Court said,

> "...he cannot rest on the bare assertion of his defense. He is bound to establish it. The state can command only by laws....defendant, in order to complete his defense, to produce a law of the state which constitutes his commission as its agent, and a warrant for his act."

72. The lawyers for both sides in these matters acted in concert with the judges, and the Lane County Circuit Court Clerk's office to produce a judgment that would result in enrichment of fraud through the impaired contract and the Federal Court exonerated it .[30]

73. Rebuttal 2: I have proven the deprivation of a number of constitutionally protected rights and believe I am entitled to relief.[31]

74. Rebuttal 3: The Court erred by relying on ***Clements v. Washoe***

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[28] Preclusion is addressed on Page 1 with recent case law.

[29] Howlett v. Rose. 496 U.S. 356 (1990) Howerton v. Gabica 708 F2d 380 (1983) Hafer v. Melo 112 SCt. 358 (1991).

[30] Lane Co. v. Oregon 7 Wall 71, 76 (1868)

[31] United States v. Price 383 U.S. 787, 86 SCt 1152, (1978)

No. 9316693 (decided 1995) Where District Court initially ruled against the **Clements, the Ninth Circuit in their favor reversed the case in substantial part**. There the court stated the primary exception to the rule of preclusive effect to judgment rendered in proceedings that fail to comply with the minimum standards of due process. With regard to claim preclusion, in relying on Clements the court overlooks the primary exception to the general rule listed *in* Clements.

75. The Ninth Circuit reviewed my brief and the distinguishing factors I raised that challenged the dismissal. Instead, it gave "no difference" to the previous reasons for dismissal and set off in a new direction implying that I failed to give notice to my creditors as a new issue. So anxious is the Court to sweep aside the violations and keep my money that it will now settle for any excuse, even one not supported by record. The Court is again using a procedural rule to defeat the United States Constitution. The **Ninth Circuit Memorandum** as follows:

76. The court cited Maya Contr. (In re Maya Contr. Co. 78 F3d 1395 (9th Cir. 1996) (implies that I did not give notice of Bankruptcy to my creditors therefore am therefore I am not entitled to complain).

77. Rebuttal 1: Bankruptcy Court sent out Notice to creditors five days after my petition was filed I immediately provided the Ninth Circuit Court with proof of that Notice and requested reconsideration En Banc. The Court denied my request -two judges were against me and the third favored reconsideration.

78. Rebuttal 2: The dates on the violations go well beyond the date of my bankruptcy. McRill's lawyer continued to enter orders and judgments in the underlying cases, as late February 19, two months after my bankruptcy. Bruce Newton's prejudgment lien that I appealed was dismissed three weeks after my bankruptcy. My State appeal against Circuit Court was dismissed five months into my bankruptcy, exactly six days before it was abandoned back to me. Each violation intentionally protected and enriched my opponents.

79. "Judges are immune." The Court Cites Franceschi v. Schwartz 57 F3d 828 (9th Cir. 1995) Branson v. Nott 62 F3d 287 (9th Cir.1995) and Ashelman v. Pope 793 F2d 1072 (9th Cir. 1986)

80. Rebuttal 1: I have previously discussed the issue of immunity and proved that judges are not immune under these circumstances. The Ninth Circuit has granted these defendants absolute immunity in total disregard for the protections granted under the U. S. Constitution, Federal Acts of Congress as well as previous Supreme Court Decisions; it even ignores its own previous case rulings. This dismissal negates the purpose of the Civil Rights Act[32]

81. Rebuttal 2: The cases cited by the Ninth Circuit for this dismissal do not address violations of constitutional prohibitions. The cases are significantly different in other respects as well. Each of the defendants in these cases were actually caught in various acts of breaking the law. Each filed a nuisance claim of minimal value while incarcerated without any proof of any actual violation. Conversely, ***I am not a criminal defendant; I have not broken any laws and I have proven violations of constitutional prohibitions.*** In fact, the whole reason for impairing the contract relied on McRill's tort for conversion and that was reversed in my favor. In addition, the judges and lawyers, and the Court itself broke the law by violating the U.S. Constitution.

82. Rebuttal 3: The Court is attempting to introduce a red herring by raising an immunity issue that does not exist reminiscent of *Bradley v. Fisher* by applying *Ashelman* (a Bradley derivative) as its justification for affirming this dismissal on the basis of jurisdiction. Unlike this case, *Ashelman* lacked proof of any conspiracy between state officials involved with private parties as required under §1983. Thus, *Ashelman* was dismissed on the basis of lack of jurisdiction. *Franceschi's* judge ordered a warrant for his arrest for failing to appear in court for breaking the law. He was driving with a suspended license, and produced a second license when stopped for

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[32] King v. Atiyeh 814 F2d 565 (9th Cir. 1987) In Re LCO Enterprises 12 F3d 938 (9th Cir.1993).

moving violations, thus he was *actually caught in the act* of breaking the law. His complaint was dismissed for lack of jurisdiction. *Branson* was arrested for car theft and did not appear when ordered to do so. He was ordered to pay sanctions in small claims court, he sued the judge; the case was dismissed, and he appealed. He lacked federal jurisdiction. The judges were given immunity, but the critical issue was the lack of jurisdiction.

83. The Court said "...The Court properly dismissed Fogh's action against those defendants. Furthermore, we agree that the claims against the remaining defendants are barred by the doctrines of res judicata and collateral estoppel."[33]

84. On ***June 19, 2000 in Arizona v. California No.8*** the Supreme Court stated that there is an exception to the application of res judicata doctrine when a circumstance was not known earlier and ruled the State parties' preclusion defense was inadmissible. Furthermore, it stated there can be no res judicata in an ongoing lawsuit. The Court said,

> "Issue preclusion bars litigation only if that issue was actually litigated and determined in a setting where its determination was essential for the final decision reached." [33]

85. This matter never left the courts, and the situation was destined to continue indefinitely until James Jagger and Bruce Newton got their way despite the appellate judgment. McRill was satisfied not to repay the cash he owed me. Beyond that he provided the excuse for lawyer fraud.

86. The Ninth Circuit requested recent cases after the case was submitted. I obliged citing Arizona v. California, and In re Elmar Lee Petitt and the court then shifted gears and accused me of not notifying my creditors and I provided the court with proof.

87. Altering judgments in the consolidated cases after the final

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[33] Drews v. EBI Co. 310 Or 134 795 P2d 531 (1990)
Restatement of Judgments Section 69(2)

judgment violated issue preclusion. If the rule applies now, it should also have applied when McRill returned to court to change the judgment and take the sale of my home away from me.[34] It should certainly have applied after I filed Petition of Bankruptcy. The Circuit Court demonstrated its own confusion over the consolidation by repeatedly changing its judgments. Two such changes occurred on Feb. 21, 1999, but others are also mentioned in my petition..

88. I believe I have shown that the Ninth Circuit Court of Appeals simply refuses to apply the correct law to these facts even those that the Supreme Court has previously decided in other cases. My substantial equity, and automatic pre-judgment attorney liens[35] supplied the impetus for delay even if that meant implementing fraud, coercion, involuntary servitude and violating the U.S.Constitution. The Court has ruled pre-judgment liens are unconstitutional elsewhere, but that did not stop the Oregon lawyers.

Conclusion

89. There is no question that I made a serious mistake in trusting the wrong individual. However, I tried to rectify my error as quickly as I could by going to the court and asking for help. A resolution was immediately available and denied. I have spent thousands of dollars trying to dissolve a contract that at the end could only be dissolved by the method I originally requested and that was "to sell the home." There is no other way to put it. I have been cheated. The lawyers saw my equity, and with the help of the judges figured they could steal it that required my ongoing investment to implement. I paid lawyers to dissolve the contract, and they went out of their way *not* to. They lied to me and to the court, and protracted litigation to run up fees. Even that were not enough, further alterations affecting my bankruptcy took place in the full view of the Chapter 7 trustee and the Bankruptcy Court and neither made any effort to stop it. Instead they barred my pleadings and sanctioned me for speaking up.

90. Bankruptcy Court simply ignored the impaired contract and the

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[34] ORS 87.430,87.445, 87.490, 87.460,87.465,88.010, 88.040 See et al v. Doehr No 90-143 (1991) 898 F. 852

[35] Steel Co. v. Citizens for a Better Environment 118 S.Ct. 1003 (1998)

corruption by sweeping it under the rug, by ordering that McRill had "zero interest". On April 24, 2000 District Court wrote an opinion affirming the Order. The Court incorrectly paraphrased the prior history claiming McRill has zero ***interest*** in the property. In truth he had ***zero equity*** in the property and a substantial ***negative interest*** in the impaired contract. The court claims that it considered the fraud and the impaired executory contract and made ***no findings***. ***"Zero interest"*** is certainly a finding. It claims that I am not the aggrieved party. There was no one else impacted by the impaired contract *except* me. Everyone else has had good reason to jump for joy.

91. I was not allowed to sell my home, rent it, or live in it, and the court would not acknowledge the expenses incurred in the interim. After driving me into bankruptcy, it denied me my homestead, on the absurd ground that I ***abandoned*** my home while I kept the heat on and the lights burning, and maintained the garden throughout five years of litigation in Oregon.

92. The liens that prevented *me* from selling the home, were simply ordered out of existence by the bankruptcy court with the same ease that they were placed there by Circuit Court. I have been cheated of terms of the contract, locked out of my home and it was sold well below the tax value and then the amount was referred to as inconsequential. I have been denied my twenty-three year old recorded Declaration of Homestead that followed me to Oregon. I have been accused of abandoning my home when a realtor by the name of *Newton* hand-picked by James Jagger locked me out. I have been shut out of the court, and sanctioned for complaining. At the age of fifty-nine, there is no possible way I shall ever regain the level of health and prosperity I earned and once enjoyed.

93. This was certainly not the promised speedy inexpensive remedy. It was the cause of months of anxiety and unnecessary expense. It may be more common than what appears. For example, in one eight year period, James Jagger has thirty-two real estate transactions recorded to his name in Oregon. His wife is also a judge going by the alias of Judge Loren Holland in Lane County with chambers and immediate access to the court files - files that were altered or disappeared during litigation. Even an ***honest*** lawyer who may want

to bring this up is loath to do so because he would be ostracized from ever practicing again. I have no such aspirations.

94. When the Court of Appeals ruled, the best it could do was "reverse conversion in my favor and "otherwise affirm." However, the trial court had no intention of abiding by what the higher court reversed and affirmed. Furthermore, that still makes no sense given the multiple causes of action. If the court reverses conversion in one, it affirms it in the other. What nonsense is that?

95. I sued the trustee for my equity in the contract, Bankruptcy Judge Glover reassigned the case to himself after barring my pleading in this matter. I requested that he withdraw; instead he transformed my letter into two motions and denied them as "not properly before the court". I asked for a federal injunction. While it was under consideration, the Judge Glover continued to write orders that would advance the trial date without discovery. He held the trial in my absence one day after my injunction was denied. I had not even seen the denial. Judge Glover ordered sanctions ten days later without giving me time and an opportunity to write my objections. The sanctions are simply a new excuse to give my entire equity to lawyers. The tactics used to confiscate my home are not dissimilar to those used in Nazis Germany, or Russia.

96. I have been denied **all** existing remedies at law and protections guaranteed under the United States Constitution.[37] The Ninth Circuit has extended the shield of judicial immunity to include judges, court clerks, and dishonest lawyers. It has allowed the carving up my estate, as it carved out judicial immunity reserved for royalty one hundred and seventy-five years before the framers of the United States Constitution signed the Declaration of Independence.

97. Two years ago the Court stated the irreducible constitutional

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37 Amend. I and Article VI Sec.1 Labov v. Lalley 809 F2d 220 (3d Cir. 1987) U.S. v. Sanchez 88 F3d 1243 (D.C. Cir. 1996) Ward v. Village of Monroeville 93 S.Ct 80, 83 (1972) Richards el al, v. Jefferson County, Alabama, et al, No. 95-386 Cites Brinkerhoff-Farris Trust & Sav. Co. v. Hill 281 U.S. 673 (1930)

minimum of standing included injury in fact, causation, and redressability.[38] The cause is fraud, the injury resulted in massive losses and the damages can be redressed accordingly. I believe I am entitled to replace my home, my life's savings, my fine credit, and, as the prevailing party, have the terms of the impaired executory contract. I wish to pay my honest creditors in full. When I filed my Petition of Writ of Certiorari I made my application to Mrs. Justice Sandra Day O' Conner by attaching a history of my mortgage payments that paced the various judgments after the impairment reflecting involuntary servitude.

98. I have offered valid proof and complained of an invidious political class with the ability to ignore every fundamental principal of American society and at the same time profit by it, to the financial and emotional detriment of the American people. I respectfully request the Court not put me through any more Oregon corruption, and, at the same time, put a stop to these abuses. I request it reverse this summary judgment in my favor for all of the above reasons stated and allow me to reverse the effects of my bankruptcy by ruling against the enrichment of fraud.[38]

I Linda L. Fogh declare under penalty of perjury that the statements made and the exhibits submitted are true and correct.

Dated: January 17, 2001

Respectfully submitted by: Linda L. Fogh

[38] Steel Co. v. Citizens for a Better Environment 118 S.Ct. 1003 (1998)

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(Recorded in Lane County, Oregon No. **9846685**) June 17, 1998.

PARTNERSHIP AGREEMENT

THIS AGREEMENT is made and entered into this 2nd day of July, 1993, by and between LINDA L.FOGH and ERROL R. (Dick) Mc RILL;

Recitals:

WHEREAS, the parties desire to form a partnership for the purpose of investing in and residing upon certain real property (hereinafter referred to as the Property) known as 4800 Thunderbird Street, Eugene, Lane, County Oregon and otherwise legally described as follows:

Lot 6, Block 3, THUNDERBIRD ESTATES, as platted and recorded in Book 42 Page 13, Lane County Oregon Plat Records, in Lane County Oregon.

WHEREAS, the parties desire to set forth the terms and conditions under which the Property will be owned and managed.

NOW< THEREFORE, in consideration of the foregoing recitals, which are by reference expressly made a part of this Agreement, and of the mutual covenants and promises contained herein, the parties have arrived at the following

AGREEMENTS:

1. Purpose. The purpose of the partnership is to invest in that piece of residential real property described above; and the purpose of this Agreement is to set forth the terms under which the parties are to share both the asset purchased and the obligations incurred by virtue of their joint ownership.

2. Term. The term of the partnership shall continue until terminated by mutual agreement or as otherwise provided herein.

1. Capital contributions and obligations. Linda shall contribute capital to the investment, in the form of down payment and closing casts in the amount of $39,599.02 (initialed by both parties) on the purchase of the Property. All expenses incurred subsequent to closing, relating to the ownership of the Property and including but not limited to loan payments, payment of taxes and insurance premiums and payment for improvements and repairs, shall be shared equally by the parties. Except as further explained

below, Linda and Dick shall be deemed at all times, unless otherwise specified in writing subsequent to the date of this instrument, to be equal owners, each as to an undivided on-half interest in the Property, holding title to the Property as tenants in common.

2. It is intended that, in acknowledgment of Linda's capital contribution for down payment and closing costs on the purchase of the Property, she shall always be deemed to have an equity in the Property that is $ (blank) greater than that of Dick. It is further acknowledged that, since Linda's fund are being borrowed from her Merrill-Lynch account, interest payments on this loan shall be paid equally by the parties as they are billed; and this payment shall be in addition to the other expense obligations mentioned above.

3. **Decision making.** All decisions relating to the activities of the partnership and concerning the Property shall be arrived at solely upon mutual assent of the parties.

4. **Bank accounts.** The parties shall establish a joint bank account for the purpose of making payment of obligations imposed by virtue of Property ownership. All withdrawals are to be made upon checks signed by both parties.

5. **Sale of Property.** Neither party to this Agreement shall sell, assign or otherwise transfer or encumber her/his interest in the partnership Property without first obtaining the consent of the other party. Notwithstanding this restriction, in the event either party to this Agreement receives from a prospective purchaser, a bonafide (sic) offer to buy his or her interest, said party shall first offer her/his interest to the other party.

The other party shall have a first right of refusal on any such bonafide (sic) offer, and may exercise her/his right to purchase the interest on the same terms and conditions as presented in the offer. The remaining party shall be given thirty days after the receipt of written notice of the proposed sale in which to purchase the interest. In the event the remaining party chooses not to purchase the interest, and the proposed sale is not consummated with the prospective purchaser, then the right of first refusal shall re-attach and be required for any subsequent sale of the interest.

6. **Effect on transferee.** Whenever any party to this Agreement or any other person shall hereafter acquire any interest in the Property, such interest so acquired shall be subject to all of the terms of this Agreement with the same force and effect as if such

party or person had owned such interest at the time of execution of this Agreement and had in fact signed the same at that time.

7. **Prohibition on assignment or transfer.** Neither party shall sell, assign or transfer his/her share or any interest in this partnership and its asset, or enter into any agreement as a result of which any person shall become interested with him/her interest in this partnership venture, except with the written consent of the other party.

8. **Sale of property** and termination of partnership. Except as provided below, decisions relating to the sale of the Property or any portion thereof, shall be arrived at solely upon the agreement of both parties. If the Property be sold in its entirety, the partnership shall be dissolved and proceeds of sale shall first be applied to debts owed on the property, then to Linda in payment of her equity/capital contribution as specified in paragraph 3 above, and shall thereafter be shared equally by the parties.

Notwithstanding the above provision relating to the sale of an undivided one-half interest in the property to a third party, and the first right of refusal relating thereto, the parties desire to arrange for a fair and equitable means for terminating the partnership as between themselves. Should either party desire to terminate their living arrangement and, consequently, this investment partnership, then he/she shall give notice to the other in writing of intent to do so. The party not giving notice shall have the opportunity to then buy out the interest of the notifying party at a price at which the parties may mutually agree.

Whether or not the parties can mutually upon the value of the equity of the notifying party, the second party shall have a period of eighteen months within which to obtain the financing necessary to cash out the equity interest of the other. Or, in the event an equity cash-out is not possible, the Property must be listed for sale within the eighteen-month period. Sale (sic) price to be as mutually agreed by the parties or, in the event they can not agree, to be set by the appraised value as determined below.

In the event the parties are not able to mutually agree upon the value of the first party's equity, then the value of the same shall be arrived at as follows: the parties shall choose an MAI appraiser and have this person determine the fair market value of the Property at the time notice is given. The value of the withdrawing party's

one-half interest (over and above the initial equity position of Linda) shall then be determined by subtracting from the fair market value the cost of real estate commissions (as if the Property were sold at that time; the amount of outstanding loan indebtedness; the amount of Linda's initial equity, and any other liens or encumbrances existing against the Property at the time; and thereafter dividing this equity number by two. The cost of the appraisal shall be shared equally by the parties.

Should the parties by (sic) unable to mutually choose an independent MAI appraiser, then they shall each select there own MAI appraiser, and the fair market value of the property shall be determined by averaging the two results and applying the same technique above to determine net equity.

9. **Death of a party.** In the event of the death of either party, it is intended that the survivor would have the option to live in the residence for a period of five years subsequent to the date of the other's death, provided that all payment responsibilities would be taken care of in a manner as if the death had not occurred. On the death of a party, the other would obtain an MAI appraisal of the property to determine the fair market value at the time of death. This figure would be used in determining the equity of the deceased party in accordance with the method expressed above. Within five years, the survivor would be required to pay the deceaseds' (sic) equity at the time of death to his/her estate or heirs by refinancing or by sale of the property.

10. **Property ownership.** At the of closing, the parties shall take title to the Property as tenants in common. It is their stated intent and desire that, in the event of the death of one of the parties, his/her interest shall pass to his/her heirs by operation of law, and shall be included in the probate estate of the deceased party. It is also acknowledge that either party may, at any time without being in violation of any of the agreement set forth above with respect to transfer her/his interest to a trust without being in violation of any of the agreements set forth above with respect to transfer of ownership interests.

11. **Legal proceedings.** In the event any action or suit is brought by either party to this Agreement, the prevailing party on trial or on appeal of the trial court's decision shall be awarded reasonable attorney's fees.

12. Entire Agreement. This Agreement contains the entire agreement of the parties.

13. Attorney Representation. The parties acknowledge that Lee Omlid represents only Linda L. Fogh in this matter, and that he cannot represent both parties.

WHEREFORE, the parties have executed this agreement the day and year first above written.

/s/ Linda L. Fogh

/s/ Errol R. McRill

STATE OF OREGON, County of Lane, ss.

This instrument was acknowledged before me on the 2nd day of July, 1993, by Linda L. Fogh and Errol R. McRill.

/s/ Lee Omlid

NOTARY PUBLIC FOR OREGON
STAMP: OFFICIAL SEAL
Lee Omlid
Notary Public - Oregon
Commission No. 006302
My Commission Expires Apr. 23, 1995

State of Oregon, County of Lane-ss.
I, the County Clerk, in and for the said County, do hereby certify that the within instrument was received for record at 98 Jun 17 am (:16
Reel 2430R
Lane County Official Records
Lane County Clerk.
By: /s/ David S. S Suchat , County Clerk

FILED
1995 AUG -9 AM 9:36
Circuit/District Courts
For Lane County,
By /s/ initial undecipherable

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LANE COUNTY

LINDA L. FOGH Plaintiff,	)	
	)	Case No. 16-95-05218
v.	)	(item no 11)
	)	
ERROL McRILL Defendant	)	STIPULATED ORDER OF CONSOLIDATION

THIS MATTER having come before this Court based upon this stipulation of the parties hereto; it appearing that Linda L. Fogh has filed against Errol R. McRill a civil action in Lane County Circuit Court Case No. 16-95-05218 and that this matter has been set for trial on february 21, 1996; and it further appearing that Errol McRill has filed in the above entitled action a Complaint against Linda L. Fogh; and it appearing that many of the matters contained in each of the Complaints involve some of the same matters; it would be in the best interest of all paarties concerned that these matters be consolidated for trial and hearing ; and, therefore, this Court being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED AND STIPULATED that the case of Errol R. McRill v. Linda L. Fogh, Lane County Circuit Court case No.: 16-95-05220 and the case of Linda L. Fogh v. Errol R. McRill, Lane County Circuit Court Case No. 16-95-05218, shall be and the same are hereby consolidated for **trial and hearing** and the cases of Errol R. McRill v. Linda L. Fogh Lane County Circuit Court Case No. 16-95-05220, **shall be set for trial** on February 21, 1996.

Dated this 9 day of August, 1995

/s/ Ann Aiken Circuit Court Judge

IT IS SO STIPULATED:
James C. Jagger, P.C.
By: /s/ James C. Jagger, OSB 70070
Of Attorneys for Plaintiff

HENDERSON AND BROMLEY
By: /s/ Bruce Newton OSB 80325
Of Attorneys for Defendant
Submitted By:
BRUCE NEWTON, OSB 80325

(drafted on James Jagger's pleading paper for lawyer for McRill)
James C. Jagger, P.C.
Attorney at Law
540 Oak Street Suite C
Oak Court Bldg
Eugene, OR 97401-2691
Telephone (503)343-1257

IDENTICAL FILE STAMP AND PLACEMENT
1995 AUG -9 AM 9:36
Circuit/District Courts
For Lane County,
By /s/ initial undecipherable

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

LINDA L. FOGH Plaintiff,	)	Case No. 16-95-05218 (case crossed out Case No.05220 penned in)
v.	)	(item no 7)
ERROL McRILL Defendant	)	STIPULATED ORDER OF CONSOLIDATION

THIS MATTER having come before this Court based upon this stipulation of the parties hereto; it appearing that Linda L. Fogh has filed against Errol R. McRill a civil action in Lane County Circuit Court Case No. 16-95-05218 and that this matter has been set for trial on February 21, 1996; and it further appearing that Errol McRill has filed in the above entitled action a Complaint against Linda L. Fogh; and it appearing that many of the matters contained in each of the Complaints involve some of the same matters; it would be in the best interest of all parties concerned that these matters be consolidated for trial and hearing ; and, therefore, this Court being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED AND STIPULATED that the case of Errol R. McRill v. Linda L. Fogh, Lane County Circuit Court case No.: 16-95-05220 and the case of Linda L. Fogh v. Errol R. McRill, Lane County Circuit Court Case No. 16-95-05218, shall be and the same are hereby consolidated for **trial and hearing** and the case of Errol R. McRill v. Linda L. Fogh Lane County Circuit Court Case No. 16-95-05220, shall be set for **trial** on February 21, 1996.

Dated this **9 day of August, 1995**

/s/ Ann Aiken Circuit Court Judge
IDENTICAL SIGNATURE

IT IS SO STIPULATED:
James C. Jagger, P.C.
By: /s/ James C. Jagger, OSB 70070
Of Attorneys for Plaintiff

HENDERSON AND BROMLEY
By: /s/ Bruce Newton OSB 80325
Of Attorneys for Defendant

Submitted By:
BRUCE NEWTON, OSB 80325

(drafted on James Jagger's pleading paper for lawyer for McRill)
James C. Jagger, P.C.
Attorney at Law
540 Oak Street Suite C
Oak Court Bldg
Eugene, OR 97401-2691
Telephone (503)343-1257

2 - Stipulated Order of Consolidation

(Faxed to me at Anacortes, WA
by Bruce Newton on Nov. 16, 1995)

NO File Stamp

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LANE COUNTY**

LINDA L. FOGH)	Case No. 16-95-05220 (typed)
Plaintiff,)	
v.)	
)	
ERROL McRILL)	STIPULATED ORDER
Defendant)	OF CONSOLIDATION

THIS MATTER having come before this Court based upon this stipulation of the parties hereto; it appearing that Linda L. Fogh has filed against Errol R. McRill a civil action in Lane County Circuit Court Case No. 16-95-05218 and that this matter has been set for trial on February 21, 1996; and it further appearing that Errol McRill has filed in the above entitled action a Complaint against Linda L. Fogh; and it appearing that many of the matters contained in each of the Complaints involve some of the same matters; it would be in the best interest of all parties concerned that these matters be consolidated for trial and hearing ; and, therefore, this Court being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED AND STIPULATED that the case of Errol R. McRill v. Linda L. Fogh, Lane County Circuit Court case No.: 16-95-05220 and the case of Linda L. Fogh v. Errol R. McRill, Lane County Circuit Court Case No. 16-95-05218, shall be and the same are hereby consolidated for **trial and hearing** and the cases of Errol R. McRill v. Linda L. Fogh

COPY

Lane County Circuit Court Case No. 16-95-05218, shall be and the same are hereby consolidated for **trial and hearing.**

Dated this **9 day of August, 1995 (date is penned in.)**

/s/ in Bruce Newton's writing for
Ann Aiken Circuit Court Judge

IT IS SO STIPULATED:
HENDERSON AND BROMLEY

By: /s/ Bruce Newton OSB 80325
Of Attorneys for Defendant Signatures **supplied in reversed positions**

James C. Jagger, P.C.
By: /s/ James C. Jagger, OSB 70070
Of Attorneys for Plaintiff

Submitted By:
BRUCE NEWTON, OSB 80325

(drafted on James Jagger's pleading paper for lawyer for McRill)
James C. Jagger, P.C.
Attorney at Law
540 Oak Street Suite C
Oak Court Bldg
Eugene, OR 97401-2691
Telephone (503)343-1257

FILED
At 1:30 O'Clock ___int.
NOV. 2 1995
Circuit/District Court
For Lane County, Oregon
By /s/ undecipherable

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LANE COUNTY

ERROL R. McRILL, Plaintiff,	)	
	)	Case No. 16-95-05220
v.	)	(item no 17)
	)	
LINDA L. FOGH Defendant	)	ORDER

This matter having come before the Court upon Motion For Dissolution of Partnership And Winding-Up of Partnership Affairs (12), and the Court, having taken said matter on the record, and being fully advised;

IT IS HEREBY ORDERED that the motion is deferred to the trial judge.

Dated November 2, 1995.

/s/ David V. Brewer, Circuit Judge

Circuit Court of the State of Oregon **Filed**
For Lane County
Lane County Courthouse
Eugene, Oregon 97491-2926

State Seal

Jack L. Mattison
Judge
(503) 687-4257

July 8, 1996

Mr. Bruce W. Newton
Attorney at Law
315 Goodpasture Island Road
Eugene, OR 97401

Re: Linda L. Fogh vs. Errol R. McRill -Case No. 16-95-05218
Errol R. McRill vs. Linda L. Fogh -Case No. 16-95-05220

Dear Counsel:
First, I want to apologize for the inordinately long amount of time it has taken me to decide this case: It is full of legal problems and muddy facts, and obviously has given me a great deal of difficulty. Had this been a simple true domestic partnership case, without the overlay of the partnership agreement, it would have been done long ago. In any event my decision follows.

I have come to the conclusion that both parties materially breached the partnership agreement, one gradually and one abruptly. One purpose of that agreement, hereinafter referred to as the PA, was to provide a residence for each party. Implicit in that is that each should have the right of quiet enjoyment of that residence. As Mr. McRill's camera business grew, the activities that it generated had an increasingly adverse impact upon Ms. Fogh's ability to reside normally in the residence, and as to her, ultimately destroyed a primary purpose of the partnership. This constituted a material breach by Mr. McRill, and occurred well prior to his eviction in May, 1995. It entitled Ms. Fogh to seek some remedy for the breach, such as a suit to dissolve the partnership, but it did not entitle her to proceed as she did.

The eviction of Mr. McRill by Ms. Fogh on **May 18, 1995**, through a misuse (although that is probably immaterial) of the FAPA restraining order process had the effect of ousting him from the partnership property and constituted a material breach of the PA by Ms. Fogh. I was not given any authority by her counsel, nor have I found any, that states that a unilateral ouster of one partner from a partnership property by another is not a material breach of the PA where occupancy of the property is a primary purpose of the partnership. While Mr.. McRill was in material breach of the PA at this time, ouster was not a proper remedy.

After these breaches, one partner continued to perform pursuant to the PA, as she continued to receive the benefit of the occupancy of the property, and the other did not, as its purpose as to him had been destroyed by the eviction. The effect of the breach upon him was to excuse further performance of his obligations under the PA. It is obvious from her testimony that from the time of the eviction on, she considered this her property, or at least property totally under her control. She changed the locks without providing him with a key, made unilateral decisions regarding maintenance, etc., and did not notify him when she vacated the property, testifying that she would not have allowed him to return under any circumstances.

Both being in material breach, neither is "entitled" to wind up the affairs of the partnership pursuant to the PA by selling the property. However, obviously someone has to do it, and the cost of a Receiver would just add to the financial disaster the parties have brought upon themselves by their actions. I am giving Ms. Fogh the responsibility of listing and selling the property, as I have very little faith Mr. McRill would ever get it done. Implicit in this is a ruling that the material breaches by both parties take away any entitlement of either to invoke the buy-out provisions of the PA.

The property is to be listed as soon as possible at a price either agreed to by the parties within seven days of the entry of the judgment or pursuant to paragraph 9 of the PA. Any repairs recommended by the appraiser or the listing realtor (not either of the parties) may be arranged for by Ms. Fogh and will be joint obligations of the parties, to be paid from the proceeds of the sale.

Pursuant to paragraph 3, **Ms. Fogh's equity in the property is $39,599.00,** also to be paid from the proceeds of the sale.

Regarding the various damages claims of the parties, my decisions are as follows. The evidence establishes that Ms. Fogh is entitled to a judgment of some unpaid loans. She claimed a total of $17,675. 52 is owed, but I cannot find within her evidence any credit for the $7,000 payment both she and Mr. McRill testified he made in March 1995 when he received discs containing his business records back from her. With this credit, I find she has proven this claim to the sum of $10,675.52 All the remainder of her claims either were not established by the evidence or relate to costs she unilaterally incurred after ousting Mr. McRill and are not recoverable from him.

So far as Mr. McRill's claims are concerned, several of them have been at least in part established, and I find he is entitled to a judgment consisting of the following:

1..Substitute lodging (motel) expenses for the **3/8** - 8/3/ 95 period in the amount of $3,375.

2The cost of recovering and sorting, etc., his camera stock in the sum of $2,700.

3.Lost profits for the months of June, July, August, and September 1995 only in the amount of $6,496.80 the figure contained in his argument.

4.For the conversion of the camera equipment retained by Ms. Fogh in the amount of $1,938.37 and for the conversion of the stored equipment in the sum of $7,767. 63. (Note that the Restraining Order required her to provide him access to all his camera stock within 72 hours of service of the Restraining Order upon him, which did not occur. Had it occurred, much of what transpired would not have happened.)

5. Miscellaneous damages in the amount of $750 to the trailer, $200 for power cords, $125 for the microwave, $650 for camera damage, $800 for film and paper damage, and $150 for replacement or remotes, totaling $2,675.

6. For the original of the duck stamp painting in the amount of $7,500, which judgment can be satisfied by the return of the painting to Mr. McRill's attorney within sixty (60) days.

The total of these items of damage is $33,039.43. All of the other claims asserted by Mr.McRill were not established by the evidence. Since these judgments against the parties presumably will attach to the property, I assume they will be settled when the property sells.

No attorney fees are awarded. Both parties materially breached the PA and therefore neither is entitled to the benefit of its provisions ***at this point.*** I would appreciate Mr. Newton preparing a judgment consistent with the above, submitting it to Mr. Jagger for approval as to form, and then to me.

Thank you for your cooperation and your patience.

Very truly yours,

/s/ Jack Mattison
Circuit Judge

JM/r

FILED
At 9:55 O'Clock A.M.
JUL 16, 1996
Circuit/District Courts For Lane County,
By /s/ R. Lowtrip

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

LINDA L. FOGH)
Plaintiff,)
)
v.)
)
ERROL McRILL)
Defendant)
)
ERROL R. McRILL)
Plaintiff)
)
LINDA L. FOGH)
Defendant)

Case No. 16-95-05218
(item no 41-43)

MONEY JUDGMENT

Case no. 16-95-05220

THIS MATTER came before the Court on February 21, 1996, before The Honorable Mattison. Each party appeared, represented by counsel, and gave testimony. The cases consolidated and tried to the Court, jury having been waived by the parties. Based on the Court's Letter Opinion, filed herewith, IT IS ADJUDGED that judgment entered as detailed below:

1 .Ms. Fogh shall list and sell the subject real property.

(a) Parties shall agree on a listing price within seven (7) days of

the entry of Judgment. If the parties cannot agree on a listing price, the subject property shall be listed at a price obtained pursuant to paragraph 9 of the Partnership Agreement.

3. Any repairs recommended by the appraiser or listing realtor may be arranged by Ms. Fogh and shall be joint obligations of the parties.

4.Ms. Fogh's equity in the subject property of $39,599.00 shall be paid to her from the proceeds of the sale.

5. The following judgments shall be entered:

MONEY JUDGMENT

Judgment Creditor:	Linda L. Fogh
Judgment Creditor's Attorney:	Bruce Newton
Judgment Debtor:	Errol McRill
Judgment Amount:	$10,675.52
Prejudgment Interest:	None
Attorney's Fees:	None
Costs and Disbursements:	None
Post judgment Interest:	Simple interest at the rate of 9% per annum, to be compounded annually

MONEY JUDGMENT

Judgment Creditor:	Errol R. McRill
Judgment Creditor's Attorney	James C. Jagger
Judgment Debtor	Linda L. Fogh
Judgment Amount:	$33,039.42
Prejudgment Interest:	None
Attorney's Fees	None
Costs and Disbursements:	None
Post judgment Interest	Simple interest at the rate of 9% per annum, to be compounded annually

DATED this 16th Day of July, 1996

/s/ Jack L. Mattison, Circuit Court Judge

Submitted by:
Bruce W. Newton, OSB 80325
Henderson & Bromley
Of Attorneys for Linda L. Fogh
Approved as to form
/s/ James C. Jagger, OSB 70070
Of Attorneys for Errol McRill

Bruce Newton's printed Pleading paper

COPY

Filed March 25, 1998

APPELLANT'S IN THE COURT OF APPEALS
OF THE STATE OF OREGON

LINDA L. FOGH — Appellant
v.
ERROL McRILL — Respondent

ERROL R. McRILL — Respondent
v.
LINDA L. FOGH — Appellant

(16-95-05218, 16-95005220, CA A 94266)

In Banc*
Appeal from Circuit Court, Lane County.
Jack Mattison, Judge.

R.Daniel Lindahl argued for theappellant, With him on the briefs was Bullivant, Houser, Bailey, Pendergrass & Hoffman, P.C.
James C. Jagger argued the cause and filed the brief for respondent.

HASELTON, J.

Judgment for conversion in amount of **$7,767.63** reversed; otherwise affirmed; remanded for entry of judgment.

APPELLATE JUDGMENT.

Warren, J. concurring in part, dissenting in part.
Edmonds, J., concurring in part, dissenting in part.
* Armstrong, J. not participating

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Appellant
[X] Costs allowed, payable by : Respondent

no file stamp

No file stamp

IN THE SUPREME COURT OF THE STATE OF OREGON

LINDA L. FOGH APPELLANT/ PETITIONER) ERROL R. MC RILL PLAINTIFF/ RESPONDENT)	)	**ORDER DENYING REVIEW**
v.	)	CA A94266 SC S45280
ERROL R. McRill RESPONDENT/ RESPONDENT LINDA L. FOGH DEFENDANT/APPELLANT)	)	

The Court has considered the petition for review and orders that it be denied.

DATE: July 14, 1998

Typed Wallace P. Carson, Jr.

Wallace P.Carson, Jr.
Chief Justice

Copies to:
Linda L. Fogh — Attorney for Appellant / Petitioner
James C. Jagger — Attorney for Respondent / Respondent
This computer-generated case caption may not comply with ORAP.05(1) & 5.05(5)

COPY

Filed March 25, 1998

IN THE COURT OF APPEALSOF THE STATE OF OREGON

LINDA L. FOGH — Appellant

v.

ERROL McRILL — Respondent

ERROL R. McRILL — Respondent

v.

LINDA L. FOGH — Appellant

(16-95-05218, 16-95005220, CA A 94266)

In Banc*

Appeal from Circuit Court, Lane County.
Jack Mattison, Judge.

R.Daniel Lindahl argued for theappellant, With him on the briefs was Bullivant, Houser, Bailey, Pendergrass & Hoffman, P.C.

James C. Jagger argued the cause and filed the brief for respondent.

HASELTON, J.

Judgment for conversion in amount of **$7,767.63** reversed; otherwise affirmed; remanded for entry of judgment.

APPELLATE JUDGMENT.

Warren, J. concurring in part, dissenting in part.

Edmonds, J., concurring in part, dissenting in part.

* Armstrong, J. not participating

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Appellant

[X] Costs allowed, payable by : Respondent

MONEY JUDGMENT

Judgment # 1

Creditor: Linda L. Fogh
Debtor: Errol R. McRill
Costs: $1,671.80
Attorney Fees $10,674.50
Total Amount : $12,346.30 Interest: Simple, 9% per annum, from the date of this appellate judgment

Appellate Judgment Effective Date: October 7, 1998 **(Seal Filed October 9, 199**

IN THE SUPREME COURT OF THE STATE OF OREGON

LINDA L. FOGH Plaintiff-Appellant, Petitioner on Review, ERROL R. MC RILL Defendant - Respondent, Respondent on Review.	) Lane County Circuit) Court No.16-95-05218) SC S45280) CA A94266))
v. ERROL R. McRill Plaintiff - Respondent, LINDA L. FOGH Defendant Appellant.	) Lane County Circuit) Court No.16-95 05220))
BRUCE W. NEWTON, Plaintiff - Respondent, v. LINDA F. FOGH, Defendant - Appellant, And IMPERIAL CREDIT INDUSTRIES, INC., ERROL McRILL AND JANE DOE, Defendants.	) Lane County Circuit)Court No. 16-97-06706) CA A102747)) **ORDER DENYING**) **REQUEST FOR**) **FINDINGS AND**) **CONCLUSIONS OF**) **LAW**

Upon consideration by the court.

Petitioner on review has requested the court to provide findings of fact and conclusions of law. Pursuant to ORCP 62B, for denying her request to amend the judgment. The request is denied.

DATED THIS **28th day of October, 1998**.

/s/ Wallace P. Carson, Jr.
Wallace P. Carson, Jr.
Chief Justice

C; Linda L. Fogh
James c. Jagger
Bruce W. Newton

No Time stated
JAN 21, 1999
Circuit/District Courts For Lane County,
By /s/ C.Pulzie

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LANE COUNTY

LINDA L. FOGH Plaintiff,	)	
v.	)	Case No. 16-95-05218
ERROL McRILL Defendant	)	**JUDGMENT ORDER**
ERROL R. McRILL Plaintiff	)	
	)	Case no. 16-95-05220 (item 90)
LINDA L. FOGH Defendant	)	**JUDGMENT ORDER**

THIS MATTER having come before this Court based upon the Order to Show Cause filed by Errol R. McRill and the same having been duly served upon Linda L. Fogh and this matter having come before the above-entitled Court for hearing at 10:00 a.m. on Monday, January 11, 1999; it further appearing that Errol R. McRill appeared personally and by and through his counsel and that Linda L. Fogh did not so appear; and the Court having been otherwise fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that Errol McRill shall proceed with the exclusive responsibility for selling the residence located at 4800 Thunderbird "Lot 6, Block 3, Thunderbird Estates, as platted and recorded in Book 42, Page 13, Lane County, Oregon Plat Records, Lane County, Oregon.", and the Court shall approve the sale of 4800 thunderbird. Which has been presented by Errol R. McRill previously to Linda L. Fogh by and through the realtor, Susan Gierga in which Daniel and Jane Hansen are the purchasers; and

IT IS FURTHER ORDERED that Errol r. McRill and Linda L. Fogh are hereby ordered to sign whatever documents are

necessary to facilitate the sale of this property. The Court denies the Motion to Strike filed by Linda L. Fogh herein and does retain jurisdiction of this matter to effect the sale of this property; and

IT IS FURTHER ORDERED AND ADJUDGED that Errol R. McRill shall have and recover Judgement against Linda L. Fogh for his reasonable and necessary attorney's fees ~~incurred~~ in the sum of $462.50 said Judgment being a single amount due in case No. 16-95-0218 and No. 16-95-220.

MONEY JUDSGMENT

ATTORNEY FEES:

Judgment Creditor	: Linda L. Fogh
Judgment Creditor's Attorney	: Pro se
Judgment Debtor	: Errol R. McRill
Amount of Judgment	: $462.50
Rate of Interest on Unpaid Judgment	: 9 percent simple interest

Dated this 21st day of January, 1999

/s/ signature undecipherable
Circuit Court Judge

Submitted by:
James C. Jagger, OSB #70070
Attorneys for McRill

FILED
No Time stated
JAN 27, 1999
Circuit/District Courts For Lane County,
By /s/ C.Pulzie

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LANE COUNTY

LINDA L. FOGH)
Plaintiff,)
v.)**Case No. 16-95-05218 (Item 114)**
ERROL McRILL) **JUDGMENT ORDER**
Defendant)
ERROL R. McRILL)
Plaintiff) Case no. 16-95-05220
LINDA L. FOGH)
Defendant) **JUDGMENT ORDER**

THIS MATTER having come before this Court based upon the Order to Show Cause filed by Errol R. McRill and the same having been duly served upon Linda L. Fogh and this matter having come before the above-entitled Court for hearing at 10:00 a.m. on Monday, January 11, 1999; it further appearing that Errol R. McRill appeared personally and by and through his counsel and that Linda L. Fogh did not so appear; and the Court having been otherwise fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that Errol McRill shall proceed with the exclusive responsibility for selling the residence located at 4800 Thunderbird "Lot 6, Block 3, Thunderbird Estates, as platted and recorded in Book 42, Page 13, Lane County, Oregon Plat Records, Lane County, Oregon.", and the Court shall approve the sale of 4800 thunderbird. Which has been presented by Errol R. McRill previously to Linda L. Fogh by and through the realtor, Susan Gierga in which Daniel and Jane Hansen are the purchasers; and

IT IS FURTHER ORDERED that Errol r. McRill and Linda L. Fogh are hereby ordered to sign whatever documents are necessary to facilitate the sale of this property. The Court denies the Motion to Strike filed by Linda L. Fogh herein and does retain jurisdiction of this matter to effect the sale of this property; and

IT IS FURTHER ORDERED AND ADJUDGED that Errol R. McRill shall have and recover Judgement against Linda L. Fogh for

his reasonable and necessary attorney's fees incurred in the sum of $462.50 said Judgment being a single amount due in case No. 16-95-0218 and No. 16-95-220.

MONEY JUDSGMENT

ATTORNEY FEES:

Judgment Creditor : Linda L. Fogh
Judgment Creditor's Attorney : Pro se
Judgment Debtor : Errol R. McRill
Amount of Judgment : $462.50
Rate of Interest on Unpaid Judgment : 9 percent simple interest

Dated **this 21st day of January, 1999**

/s/ signature undecipherable
Circuit Court Judge

Submitted by:
James C. Jagger, OSB #70070
Attorneys for McRill

TM 1/28/99 4:27A

Int **Judgments Lane County Circuit CourtStatus Closed INAC**
se# 169505218 Fogh Linda L/McRill Errol R.
Civil Declaratory Judgment

Judgment Judgment Status.... ...Unsatisfied
Docket Entry Time 2:53 AM
Docket Entry Date 1/27/99 Volume/Page
Judgment Date 1/21/99
Judgment $462.50
Simple Interest
Amended as to debtor and creditor only

TY JGMT ROLE PLAINTIFF ROLE JUDGMENT STATUS
Plaintiff FOGH Linda L. Fogh Creditor Unsatisfied
JGMT ROLE DEFENDANT ROLE JUDGMENT STATUS
TY Defendant McRill ERROL R. Debtor Unsatisfied
PVT ENTER DT__FILE DT__
EVENT/FILING/PROCEEDING__SCD DT__TIME__
114 1/27/99 1/21/99 Judgment
Amended as to debtor and Creditor names only/Nunc pro tunc to 1/21/99 JUD 8 Bearden Mary Ann
Related event **#115**

********** END OF DATA **********

FILED
No Time stated
Filed Feb.19,1999
Circuit/District Courts For Lane County,
Sig.. Undecipherable

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LANE COUNTY

LINDA L. FOGH)
Plaintiff,)
v.)**Case No. 16-95-05218 (Item 117)**
ERROL McRILL) **JUDGMENT ORDER**
Defendant) **NUNC PRO TUNC**
ERROL R. McRILL)
Plaintiff) Case no. 16-95-05220
)
LINDA L. FOGH) **JUDGMENT ORDER**
Defendant) **NUNC PRO TUNC**

THIS MATTER having come before this Court based upon the Order to Show Cause filed by Errol R. McRill and the same having been duly served upon Linda L. Fogh and this matter having come before the above-entitled Court for hearing at 10:00 a.m. on Monday, January 11, 1999; it further appearing that Errol R. McRill appeared personally and by and through his counsel and that Linda L. Fogh did not so appear; and the Court having been otherwise fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that Errol McRill shall proceed with the exclusive responsibility for selling the residence located at 4800 Thunderbird "Lot 6, Block 3, Thunderbird Estates, as platted and recorded in Book 42, Page 13, Lane County, Oregon Plat Records, Lane County, Oregon.", and the Court shall approve the sale of 4800 thunderbird. Which has been presented by Errol R. McRill previously to Linda L. Fogh by and through the realtor, Susan Gierga in which Daniel and Jane Hansen are the purchasers; and

IT IS FURTHER ORDERED that Errol r. McRill and Linda L. Fogh are hereby ordered to sign whatever documents are necessary to facilitate the sale of this property. The Court denies the Motion to Strike filed by Linda L. Fogh herein and does retain jurisdiction of this matter to effect the sale of this property; and

IT IS FURTHER ORDERED AND ADJUDGED that Errol R. McRill shall have and recover Judgement against Linda L. Fogh for his reasonable and necessary attorney's fees incurred in the sum of $462.50 said Judgment being a single amount due in case No. 16-95-0218 and No. 16-95-220.

MONEY JUDSGMENT

ATTORNEY FEES:

Judgment Creditor : Linda L. Fogh
Judgment Creditor's Attorney : Pro se
Judgment Debtor : Errol R. McRill
Amount of Judgment : $462.50
Rate of Interest on Unpaid Judgment : 9 percent simple interest

Dated this 17th day of February, 1999 nunc pro tunc to January 21, 1999

/s/ signature undecipherable
Circuit Court Judge

Submitted by:
James C. Jagger, OSB #70070
Attorneys for McRill

TM 2/19/99 1:56A
Int **Judgments Lane County Circuit Court Status Closed INAC**
se# 169505218 Fogh Linda L/McRill Errol R.
Civil Declaratory Judgment

Judgment Judgment Status.... ...Unsatisfied
Docket Entry Time 8:54 AM
Docket Entry Date **2/19/99** Volume/Page
Judgment Date **1/21/99**
Judgment $462.50
Simple Interest
Amended as to debtor and creditor only

TY JGMT ROLE PLAINTIFF ROLE JUDGMENT STATUS
Plaintiff FOGH Linda L. Fogh Debtor Unsatisfied
JGMT ROLE DEFENDANT ROLE JUDGMENT STATUS
TY Defendant McRill ERROL R. Creditor Unsatisfied
PVT ENTER DT__FILE DT__
EVENT/FILING/PROCEEDING__SCD DT__TIME__
117 2/19/99 1/21/99 Judgment Amended as to debtor and Creditor names only/Nunc pro tunc to
1/21/99 JUD 8 Bearden Mary Ann
Related event **#118**
********** END OF DATA **********

IN THE COURT OF APPEALS FOR THE STATE OF OREGON

BRUCE W. NEWTON Plaintiff-Respondent, v. LINDA L. FOGH Defendant-appellant, And IMPREIAL CREDIT INDUCTRIES, INC., ERROL McRill AND JANE DOE, Defendants	) Lane County Circuit) Court No.16-97-06706)) CA A 102747)) **ORDER OF**) **DISMISSAL AND**) **APPELLATE**) **JUDGMENT**

On November 18, 1998, the court issued a notice of default for failure to serve and file the opening brief. Appellant has responded and states that she has filed a notice of removal in Federal Court. Because there is no authority to remove a case from a state appellate court to a federal district court, there is no reason to postpone the issuance of the order of dismissal for lack of prosecution pursuant to this court's letter dated November 18, 1998.

Appeal Dismissed.

/s/ Mary J. Deits
Chief Judge

JAN 20, 1999
DATE

C: Linda L. Fogh
Bruce W. Newton

Designation of Prevailing Party and Award of Costs
Prevailing Party: Respondent

[X] No costs allowed
[ ] costs allowed, payable by:
Appellate Judgment
Effective Date: JANUARY 20, 1999

Court of Appeals
Seal

Replies should be directed to the State Court Administrator, Records Section, Supreme Court Building, 1163 State Street, Salem OR6

The Honorable Samuel Steiner

THE SUPREME COURT OF THE STATE OF OREGON

LINDA L. FOGH, Plaintiff - Relator, v. CIRCUIT COURT FOR LANE COUNTY The Honorable KIP LEONARD; The Honorable PIERRE VAN RYSSELBERGHE;) The Honorable ANN AIKEN; The Honorable JACK L. MATTISON; The Honorable ALTA J. BRADY; The Honorable MAURICE MERTEN; The Honorable TED CARP; DANIEL LINDAHL; LEE OMLID; LISA GALLO; BRUCE NEWTON; JOHN HENDERSON; WILLIAM BROMLEY; AND JAMES JAGGER, Defendants - Adverse Parties	) Relating to Lane) County Circuit Court) No. 16-98-13186)) SC S 45704))**ORDER DENYING**) **PETITION FOR**) **WRIT OF**)**MANDAMUS FOR**) **COMPULSORY**) **PROCESS BY**) **FORCE OF**) **STATUTE**

Upon consideration by the court.

Relator's petition for writ of mandamus for compulsory process by force of statute and all other requests for relief are denied.

DATED this **9th day of October, 1998.**

/s/ Wallace P. Carson, Jr.
Wallace P. Carson, Jr.
Chief Justice

C: Linda L. Fogh
Joel S. DeVore
Charles D. Carlson
Kaye E. Sunderland
Designation of Prevailing Party and Award of Costs
Prevailing Party: Defendants
[X] No costs awarded

IN THE SUPREME COURT OF THE STATE OF OREGON

LINDA L. FOGH, Plaintiff - Relator, v. CIRCUIT COURT FOR LANE COUNTY The Honorable KIP LEONARD; The Honorable PIERRE VAN RYSSELBERGHE; The Honorable ANN AIKEN; The Honorable JACK L. MATTISON; The Honorable ALTA J. BRADY; The Honorable MAURICE MERTEN; The Honorable TED CARP; DANIEL LINDAHL; LEE OMLID; LISA GALLO; BRUCE NEWTON; JOHN HENDERSON; WILLIAM BROMLEY; AND JAMES JAGGER, Defendants - Adverse Parties	) Relating to Lane) County Circuit Court) No. 16-98-13186)) SC S 45720)))**ORDER DENYING**) **PETITION FOR**) **WRIT OF**)**MANDAMUS FOR**) **EMERGENCY**) **PROHIBITION**)

Upon consideration by the court.

Relator's petition for writ of mandamus for emergency prohibition and all other requests for relief are denied.

DATED **this 9th day of October, 1998.**

/s/ Wallace P. Carson, Jr.
Wallace P. Carson, Jr.
Chief Justice

C: Linda L. Fogh
Joel S. DeVore
Charles D. Carlson
Kaye E. Sunderland
Designation of Prevailing Party and Award of Costs
Prevailing Party: Defendants
[X] No costs awarded

FILED

FILED
At 12:00 O'Clock P.M.
NOV 3 1998
Circuit/District Courts For Lane County,
By /s/ illegible

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

LINDA L. FOGH,	) Relating to Lane
Plaintiff -	) County Circuit Court
v.	) No. 16-98-13186
CIRCUIT COURT OF (sic) LANE COUNTY)	
Judge KIP LEONARD; et al	)ORDER OF
Defendants	) DISMISSAL

THIS MATTER HAS COME BEFORE THE COURT upon Defendant's Motions to Dismiss. The Court has determined that no oral argument is necessary, since no party has requested it. In addition, particularly on behalf of Plaintiff, multiple pages of written argument have been submitted. therefore, the Court is sufficiently advised in the premises:

This Court has previously continued, upon Defendant's Motion, Plaintiff's Motion for summary Judgment. Plaintiff immediately sought a Writ of Mandamus in the Oregon Supreme Court, but her Motion were denied.

The grounds for the various Motions to Dismiss are differentiated by the class of Defendants which has filed the respective Motions. In one group are the Circuit Court for Lane County and seven judges, one of whom is now a federal judge. The Other seven Defendants are lawyers who have apparently represented Plaintiff on an adverse party in various cases in which the Plaintiff has been a litigant.

1. Motion to dismiss by Defendant Judges and Circuit Court for Lane County.

The Motion filed on behalf of the judges and the Circuit Court seeks dismissal on the grounds that Circuit court County of Lane is not a person subject to suit under 42 U.S.C. §1983; that the

Defendant judges have absolute immunity; and that Plaintiff has failed to give required notice under the Oregon Tort Claims Act.

In her response, Plaintiff has made clear that she does not understand the difference between the Circuit Court for Lane County and Lane County itself. The Circuit Court is a part of the Oregon Judicial Department and is a State agency. Lane County on the other hand is a political subdivision of the State of Oregon. That entity is not mentioned in Plaintiff's Complaint, even thought in her Memorandum in Opposition, Plaintiff makes frequent reference to Lane County Administrators. It is clear under the case law that Plaintiff may no maintain an action under §1983.

It is also clear that the Defendant Judges have absolute immunity for actions taken in their individual capacity. All of Plaintiff's allegations that judges have conspired with the Lawyer Defendants, have altered transcripts, have been disrespectful to her and so on are all described as occurring in the judge's official capacity.

Further, there is no identified class of non-pro se litigants. There is no statute or case identified by Plaintiff in which such a class has been recognized.

It is also clear that Plaintiff has not alleged that she ever brought notice under ORS 30.275(2)(b) to the State of Oregon that any government entity or individual had committed any tortuous conduct against her. A failure to allege that the notice was provided is a fatal flaw in the Complaint.

Therefore, upon each of the grounds asserted by the Circuit Court and Defendant Judges, the Plaintiff's case is dismissed. Pursuant to ORS 15.B(2), Plaintiff shall have ten (10) days after service of this Order to re-plead.

2. Motions of Defendant Lawyers

As noted, Motions to Dismiss have also been filed on behalf of the lawyers who have in the past represented Plaintiff or an adverse party in other litigation. These Defendants move the dismissal of Plaintiff's Complaint on the ground that she has failed to state a claim. They allege that the Courts of the United States have held that in order to state a claim under **41** (sic)U.S.C. §1983 a party must allege that a person acting under color of State law much have committed the conduct at issue and that conduct must have deprived the person of some right, privilege or immunity by the Constitution or laws of the United States.

As pointed out in the Memorandum submitted by the Defendant lawyers, in order for a person to act under color of law that person must be a willing participant in a joint action with the State or its agents. The representation by an attorney of a litigant in the State Court does not make the attorney a joint actor with the State or State official.

With regard to the second contention of these Defendants, it is important to point out that the Motion is to Dismiss the Complaint. therefore, even though the Plaintiff has made a variety of other statement, claims and allegations in her later filings, the Motion to Dismiss is to be governed by the language of the Complaint. As noted with respect to the Motion filed by the Defendant judges, the Plaintiff has not asserted that she has been deprived of any right, privilege or immunity based upon animus against a recognized class. Non-lawyer, prose litigants do not fit such a classification.

Therefore, the Motions of the Defendant Lawyers to Dismiss are likewise granted. Again, Plaintiff shall have ten (10) days from service of this Order within which to re-plead.

Inasmuch as Plaintiff's Compliant is now dismissed pursuant to Defendants' Motion, the Motion for Summary Judgment is moot.

Dated **this 3 day of November 1998.**

/s/ Jack Billings, Circuit Judge

FILED
At 11:00 O'Clock P.M.
DEC 3 1998
Circuit/District Courts For Lane County,
By /s/ illegible

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

LINDA L. FOGH, Plaintiff	) Relating to Lane
	) County Circuit Court
v.	) No. 16-98-13186
CIRCUIT COURT OF LANE COUNTY	)
Judge KIP LEONARD; et al	) **ORDER DENYING**
Respondent	) **MOTION TO STRIKE**

THIS MATTER CAME BEFORE THE COURT upon Plaintiff's Motion to Strike the Order of dismissal previously entered by the Court on November 3, 1998. Plaintiff contended that the Court lost jurisdiction "on October 23, 1998 when Plaintiff filed her Notice of Removal to the Federal District Court." Plaintiff contended that some notification was given to "Circuit Court." but that is apparently untrue, since no such notice appears in the file.

A Response was filed on behalf of six of the seven Defendant attorneys which pointed out the Plaintiff sought removal of the case to the United States District Court for the Western District of Washington. Submitted with the Response was a memorandum in support of the Defendant's Motion to Dismiss Plaintiff's purported removal. That Memorandum points out that there is no basis for a Plaintiff to remove an action that that Plaintiff had commenced in a State Court. It is also noted that any Notice of Removal could only be filed within thirty days of the service of the Defendants, which had not been accomplished. On these points alone, it is clear that Plaintiff's purported removal will fail and is a frivolous exercise. Plaintiff's Motion is denied.

DATED this **3 day of December 1998**

/s/ Jack Billings Circuit Judge

FILED
At 11:15 O'Clock P.M.
DEC 3 1998
Circuit/District Courts For Lane County,
By /s/ illegible

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

LINDA L. FOGH,	)
Plaintiff	)
v.	) No. 16-98-13186
CIRCUIT COURT OF LANE COUNTY	)
Judge KIP LEONARD; et al	)JUDGMENT OF
Respondent	) DISMISSAL WITH PREJUDICE

THIS MATTER CAME BEFORE THE COURT upon the Court's own Motion . On November 3, 1998, the Court entered an Order of Dismissal, having granted Defendants' various Motions to Dismiss. That Order provided that Plaintiff would have ten(10) days from service of this Order in which to re-plead. Plaintiff has failed and refused to plead further. The Motion to Strike the Dismissal does not toll the time to re-plead. The Court is fully advised in the premises.

NOW THEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED that Plaintiff's cause is dismissed with prejudice.

DATED the 3 day of December 1998

/s/ Jack Billings
JACK BILLINGS, CIRCUIT JUDGE

No File Stamp

IN THE COURT OF APPEALS FOR THE STATE OF OREGON

LINDA L. FOGH, Plaintiff v. CIRCUIT COURT FOR LANE COUNTY The Honorable KIP LEONARD; The Honorable PIERRE VAN RYSSELBERGHE; The Honorable ANN AIKEN; The Honorable JACK L. MATTISON; The Honorable ALTA J. BRADY; The Honorable MAURICE MERTEN; The Honorable TED CARP; DANIEL LINDAHL; LEE OMLID; LISA GALLO; BRUCE NEWTON; JOHN HENDERSON; WILLIAM BROMLEY; AND JAMES JAGGER, Defendants	) Relating to Lane) County Circuit Court) No. 16-98-13186)) CA A104858))) **ORDER OF**) **DISMISSAL**))))))	

It appears from the record that appellant is in default for failure to serve and file the opening brief. It further appears that on March 11, 1999, notice was given the parties that this appeal would be dismissed pursuant to ORAP 1.20 unless good cause was shown within 14 days from that date why the appeal should be retained on the docket. As of this date the appellant's brief has not been filed.

Appeal dismissed.

/s/ Mary Deits
Chief Judge
MAY 6, 1999
DATE

Designation of Prevailing Party and Award of Costs
Prevailing Party: Respondents
[X] No costs allowed [ ] Costs allowed, payable by:
Appellate Judgment effective date: seal

cc: Linda L. Fogh
Michael D. Reynolds

District/off: 0981-2 User: judy Pg 1 of 1 Date Rcvd **Jan 12, 1999**
Case: 99-00251 Form ID: B7 Total Served 36

The following entities were served by first class mail on Jan 14, 1999.

db	Linda L. Fogh, 1807 Bradley Dr., Anacortes, WA 98021
tr.	Merrilee MacLean, 1201 3rd Ave. #3040, Seattle, WA 98221
ust	US Trustee, 1200 6th Ave. #600, Seattle, WA 98101
45851347	Abbott Davis Rothwell & Mullin 1000 Second Ave #1350 Seattle, WA 98104-1046
45851365	American Seamless Guttering, 8547 Jasper Park Rd, Pleasant Hill, OR 97455
45851372	Book Publishing Co. 201 Westlake Ave. N, Seattle WA 98109-5293
45851346	Brown Roseta Long McConville, 44 Club Rd., Suite 210 Eugene, OR 97401
45851352	Bruce Newton, 315 Goedpasture (sic)Island Road, Eugene, OR 97401
45851354	Bullivant Houser Bailey, Pendergrass, 888 SW 5th Ave #300, Portland, OR 97204-2089
45851370	Cardwell Construction Inc. 29377 Airport Rd. Eugene, OR 97402
45851358	Cendant Mortgage P.O. Box 5452, Mt. Laurel, NJ 08054-5452
45851359	Citibank Preferred, P.O. Box 6001, The Lakes, NV USA 88901-6001
45851356	City of Eugene Finance, 860 West Park #300, Eugene, OR 97440
45851355	Daniel Lindahl, 888 SW 5th Ave.Porland, OR 97204-2089
45851357	Dept. of Assessment & Taxation, 125 E.8th Ave. Eugene, OR 97401-2968
45851363	Dunright Home Improvement, 744 N. Vaanduyn, Eugene, OR 97401
45851368	Ed Litten, P.O. Box 40994, Eugene, OR 97404
45851361	Emerald People's Utility, 33733 Seavey Loop Rd. Eugene, OR 97405-9614
45851360	Errol McRill 113 West Anchor, Eugene, OR 97404

45851343	Henderson & Bromley PC 315 Goodpasture Island Rd. Eugene, OR 97401
45851369	Jack Ellison, 85477 Jasper Park Road, Pleasant Hill OR, 97455
45851340	James Jagger PC, 540 Oak Street, Eugene, OR 97401
45851349	Joel De Vore 777 High Street Eugene, OR 97440
45851351	John Henderson 315 Goodpasture Island Rd. Eugene, OR 97401
45851362	Liberty Mutual, PO Box 7300, Dover NH. 03821-7300
45851342	Lisa Gallo PC 241 East Broadway Rm B Eugene, OR 97401-2703
45851348	Luvaas Cobb Richards Fraseer (sic) PC 777 High Street, Eugene, OR 97440
45851367	National Pest Control, PO Box 40994, Eugene, OR 97404
45851345	Oregon Dept. of Justice 1162 Court Street NE, Salem OR 97310-0506
45851353	Patrick Rothwell, 1000 Second Ave. 1350 Seattle, WA 98104-1046
4585151350	Phyllis Kamitsuka, 777 High Street, Eugene, OR 97440
45851341	Rodney B. Carter, 777 High Street, Eugene,OR 97440
45851366	Sam Construction, 1331 Chase Street, Eugene OR 97401
45851371	USAA Federal Savings Bank, 10750 McDermott Fwy. San Antonio TX 78288-596
45851344	William Bromley, 315 Goodpasture Island Rd. Eugene, OR 97401
45851364	William Roberston, 744 N. Vanduyn, Eugene, OR 97401

Following entities were served by electronic transmission. Total 0
****** Bypassed Recipients****** Total 0

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entites in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

01/14/99 /s/ Joseph Speetje

Filed May 12, 1999

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re	)	Case No. 99-251
Linda L. Fogh	)	**ORDER OF**
Debtor	)	**ABANDONMENT**

THIS MATTER came on regularly before the court on the Notice and Motion of Merrilee A. MacLean, as Chapter 7 trustee for the bankruptcy estate of Linda L. Fogh, by and through her attorneys of record, Karr Tuttle Campbell, of the Trustee's intent to abandon certain assets of the estate, namely litigation including appeals that the debtor was involved in at the time the bankruptcy petition was filed. On April 15, 1999, the trustee served the Notice and Motion on all creditors and parties in interest in the bankruptcy, advising them that unless a written objection was filed and served within fifteen (15) days of the Notice, the Trustee, without further notice, would present an order ex parte approving abandonment. Before the time for objections passed, the Trustee received the Debtor's Objections to Trustee's Notice of Intent to Abandon Causes of Action/ Motion for Summary Judgment and Creditor's Objection to Trustee's Notice of Intent to Abandon Causes of Action filed by Charles R. Mallary. The Trustee then filed a Response to Objections to Trustee's Proposed Abandonment of Causes of Action, supported by the Declaration of Diana K. Carey.

The Court having heard arguments, Diana K.Carey for Trustee Merrilee MacLean. the Debtor Linda L. Fogh (appearing pro se) and Charles Mallary (appearing pro se), and having reviewed the pleadings filed for and in opposition to the motion (including the exhibits thereto), and finding that the objections should be overruled and the abandonment is in the best interests of the estate and its creditors because it appears that the lawsuits are burdensome to the estate and are of inconsequential value and benefit to the estate, it is hereby

ORDERED that the following assets of the estate are abandoned to the Debtor, effective with entry of this Order:

1. Linda L. Fogh v. Circuit Court for the County of Lane, State of Oregon, the Honorable Judge Kip Leonard, Hon. Pierre Van Rysselberghe, Hon. Ann Aiken, Hon. Jack L. Mattison, Hon. Alta Brady, Hon. Judge Maurice Meerten, Hon. Ted Karp, Daniel Lindahl, Lee Omlid, Lisa Gallo, Bruce Newton, John Henderson, William Bromley, James Jagger, Lane County Circuit Court No. 16-98-13186, filed on or about July 17, 1998, Complaint for Damages and Injunctive Relief for Conspiracy to Violate Civil Rights and Violation of Civil and Constitutional Rights.

2. Oregon Court of Appeals, Case No. CA A104858, on Appeal from Oregon Supreme Court Case Numbers SC S45704 and SC S45720. Appealing denial of Writ of Mandamus arising out of Lane County Circuit Court Case Number 16-98-13186.

3. Ninth Circuit Court of Appeals, Case Nos. 99-35121, 99-35122, and 99-35123 appealing the denial of removal to the Western District of Washington of three cases: Lane County Circuit Case Number 16-98-13186 noted above; Bruce Newton v. Linda Fogh, Lane County Circuit Case No. 16-97-06706, and Linda Fogh v. McRill, Lane County Circuit Court Case No 16-95-05218 and McRill v. Fogh No. 16-95-05220 (consolidated by court order, and appealed to the Oregon Court of Appeals under case number CA A94266, and review sough in the Oregon Supreme Court under case number SC 545280.)
and any and all appeals or primary cases related to these matters.

It is further ORDERED that because the Debtor's summary judgment motion was unclear as to the issues upon which relief was being sought, was untimely filed and/or not properly noted, the Debtor's summary judgement notion is DENIED.

Dated this 12 day of May, 1999

/s/ Samuel J. Steiner
United States Bankruptcy Judge

Presented and Signed by

/s/ Diana K. Carey, Karr Tuttle Campbell

The Honorable Samuel Steiner
Chapter 7

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re	)	Case No. 99-251
Linda L. Fogh	)	**ORDER AUTHORIZING SALE**
Debtor	)	**OF REAL PROPERTY FREE**
	)	**AND CLEAR OF LIENS**

THIS MATTER came on before the Court on shortened time on May 12, 1999, on the Motion of Merrilee A.MacLean, as Chapter 7 trustee for the bankruptcy estate of Linda L. Fogh, by and through her attorneys of record, Karr Tuttle Campbell, to Sell Real Property Free and Clear of Liens. The Court having heard arguments, Diana K. Carey for Trustee Merrilee A. MacLean, and the Debtor Linda Fogh appearing pro se, and having reviewed the pleadings filed for and in opposition to the motion, including the Debtor's Objections to Trustee's Motion to Sell Real Property free and Clear of Liens, the trustee's Response to Debtor's Objection to Motion to Sell Real Property, the Declarations of Robert Percy and Diana K. Carey and the exhibits thereto), the Stipulation evidences that the sale of the co-owner's interest meets the requirements of Bankruptcy Code Section 363(I) and the co-owner does not wish to purchase the property at the price at which the sale is to be consummated, and the Court finding that the objection should be overruled, that the sale is in the best interest of the debtor's estate and her creditors, and the sale having been proposed in good faith.

IT IS HEREBY ORDERED that the Trustee is authorized to sell the real property located at 4800 Thunderbird Street, Eugene, Oregon, to James and Bonnie Willette for the price of $149,900. Free and clear of liens and encumbrances pursuant to 11 U.S.C. §363(f) and (I) and that liens against the subject property shall attach to the proceeds in the same order and priority. It is

FURTHER ORDERED that amounts owning to the secured creditor Cendant Mortgage, the real estate commission owing to

Windermere Properties, and the Real estate taxes may be paid by the escrow agent at the time of Closing. It is

FURTHER ORDERED that the balance of the sale proceeds shall be disbursed to the Trustee to be held in trust pending further order of this court.

DATED this 12 day of May, 1999

/stamped/ Samuel Steiner
UNITED STATES BANKRUPTCY JUDGE

Presented by:
KARR TUTTLE CAMPBELL

By: /s/ Diana K.Carey
Diana K. Carey WSBA # 16234
Attoneys for Merrilee A. MacLean, Chapter 7 Trustee

The Honorable Samuel Steiner
Chapter 7
FOR PRESENTATION
July 9, 1999 at 9:30 a.m.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re	)	Case No. 99-251
Linda L. Fogh	)	**ORDER DENYING DEBTOR'S**
Debtor	)	**HOMESTEAD EXEMPTION**

THIS MATTER came on regularly before the Court on June 9, 1999, at 1:15 p.m. in Everett, Washington on the Trustee's Objection to Debtor's Proposed Homestead Exemption. The Court considered the arguments of the Debtor (who appeared pro se) and pleadings filed for and in opposition to the trustee's objection, including the Debtor's Affidavit in Reply to Trustee's Objection to Homestead Exemption, and Points and authorities, and the Trustee's Response re Objection to Debtor's Proposed Homestead Exemption. The Court found that the Trustee's objection should be sustained, for the reasons discussed in the Court's ruling set forth in Exhibit A, which ruling constitutes the Court's findings of fact and conclusions of law and is incorporated herein by reference. Now, therefore, it is hereby

ORDERED that the Debtor's claimed homestead exemption in the property at 4800 Thunderbird, Eugene, Oregon and the proceeds of the sale of that property is DENIED.

DATED this 9 day of July, 1999

/stamped/ Samuel J. Steiner
UNITED STATES BANKURTPCY JUDGE

Presented by:
KARR TUTTLE CAMPBELL
By: /s/ Diana K. Carey, WSBA # 16239
Attorney's for Merrilee A. MacLean, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT EVERETT

In re:	)	**COPY**
	)	
LINDA L. FOGH,	)	Case No. 00-00251
Debtor.	)	

TRANSCRIPT OF THE RULING
BY THE HONORABLE JUDGE SAMUEL J. STEINER
WEDNESDAY, JUNE 9, 1999

Reported by: Hope J. Yeager, CCR # YE-AG-EH-J404M9

AHEARN 7 YEAGER, CERTIFIED COURT REPORTERS
(206) 405-3812

EXHIBIT A

APPEARANCES

Appearing Pro Se — Ms. Linda L. Fogh
220 SW Clark Street B-304
Issaquah, WA 98027
(425) 426-1426

For the Trustee — Ms. Diana K.Carey
Attorney at Law
Karr Tuttle Campbell
1201 Third Ave. Suite 2900
Seattle WA 98101
(206) 223-1313

AHERN & YEARGER, CEERTIFIED COURT REPORTERS
*** (206) 405-3812***

EVERETT, WASHINTON: WEDNESDAY, JUNE 9, 1999
1:15 P.M. SESSION
--ooOoo--

THE COURT: All right. Here's the way I feel about it. It appears at the time of the filing of this bankruptcy, Ms. Fogh was a co-owner of the residence in Eugene, Oregon, and that Ms. Fogh had lived there last in, I believe, 1996.

MS. FOGH: '93

THE COURT: Permanently

MS FOGH: Permanently, yes.

THE COURT: In so far as I can tell, Ms. Fogh has been domiciled in the State of Washington for the 180 days before filing, and she has had no other residence address during the last few years other than in this district. The file indicates that Ms. Fogh had claimed a homestead exemption in the Oregon property under Washington law. However, in response to the trustee's objection, she cited Oregon law.

MS. FOGH: No, I cited California.

THE COURT; Wait a minute now. Then Ms. Fogh filed a notice of change to Schedule C. purporting to change the exemption to California law. Apparently she filed a declaration of Homestead in California back in 1978. After that, the California property was sold and the proceeds were reinvested in the Oregon property for which she claims not to have abandoned.

The trustee's objection to the homestead is what brings us here today. I conclude that legally the trustee has applied the correct analysis. Section 522(b)(2)(a) of the Bankruptcy Code provides that the applicable exemption is that of the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing or for a longer portion of such 180 day period and in any other place.

Accordingly, I think it's pretty clear the Washington exemption statute applies. According to the recent Ninth Circuit case In re: Arroll -- that's A-R-R-O-L-L -- which I previously mentioned to both of you, whether the debtor can claim an exemption for an Oregon residence would depend on Washington law.

As the lawyers are well aware, RCW 6.13.010, which is the Washington exemption statute, permits the exemption of property the debtor actually uses or intends to use as his or her principal home. If the home is not continuously occupied, the homestead will

be presumed abandoned after six months, unless the owner files a declaration of non-abandonment.

Ms. Fogh has been away from the property for over two years, has not filed such declaration.

As I see it, even under Oregon law, the exemption has been lost.

MS. FOGH: May I ask --

THE COURT: No, don't interrupt.

The Oregon statute provides that the homestead must be the actual abode of and occupied by the owner. And if the owner is absent or removed from the property, the exemption continues for a period of one year from the removal or absence.

Now, Ms. Fogh contends that California law applies because her domicile lasted there 16 years, longer than in any other place. And when she sold the California property, she reinvested the proceeds in the Oregon property.

The issue or the purpose of the Section 522(b)(2)(a) is not how long the debtor has lived in any place, but rather where the debtor has lived for the longest during the 180 days before the filing of the bankruptcy. California law simply doesn't apply. If it did, Ms. Fogh would have been required to occupy continuously to the date the dwelling is found exempt.

The debtor who vacated the dwelling can satisfy the continuous residence requirement only while the absence is temporary, such as vacation or hospitalization.

Now, again, Ms. Fogh contends that her removal from the property was the result of a pre-judgment attachment lien, and the attorney forged an order to show cause pending an appeal and that she was wrongfully locked out of the house. Assuming these facts are to be correct, Ms. Fogh only had to file a declaration of non-abandonment to protect the homestead.

Having failed to do so, I conclude that the trustee's objection must be sustained.

Now, I'd like it and appreciate it very much if our court reporter would made up a transcript of these remarks for inclusion in the record.

And I would also appreciate it if, Ms Carey, you would prepare and present an order on the ruling.

Ladies, thank you vary much.

MS CAREY; Your Honor, may we present that order in the Seattle office?

THE COURT: Yes, sure.

MS. CAREY Thank you.

(THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)

CERTIFICATE

I, Hope J. Yeager, CCR hereby certify that:

The foregoing pages represent an accurate and complete transcription of the ruling by The Honorable U.S. Bankruptcy Judge presiding in the aforementioned matter; and

That these pages constitute the original or a true copy of the transcript of the proceeding.

Signed and dated this 23rd day of June, 1999.

By: Hope J. Yeager
Court Reporter
CCR # YE-AG-EH-J404M9

Filed
August 3, 1999

Entered On Docket
Aug 8,1999
Hon. Judge Samuel Steiner
Chapter 7.
Western District of Washington at Seattle

Diana K Carey, WSBA 16239
Karr Tuttle Campbell
1201 Third Ave.Suite 2900
Seattle, WA 98101-3028
(206) 223-1313
Attorney for Merrilee A. MacLean

UNITED STATES BANKRUTPCY COURT
WESTERN DISTRICT OF WASHINTON AT SEATTLE

In re	)
LINDA L. FOGH	) Case No. 99-00251
Debtor	)**ORDER OF DEFAULT AND**
	) **DEFAULT JUDGMENT**
MERRILEE A. MACLEAN,	)
As Trustee in Bankruptcy	)
Plaintiff	) ADV. No. A99-07468
v.	)
ERROL RICHARD McRILL,	)
an individual,	)
BRUCE W. NEWTON,	)
an individual	)

THIS MATTER came on for hearing ex parte on the Motion of the Trustee for Entry of an Order of Default Judgment against defendant Errol Richard McRill, as supported by Declaration of Merrilee A. MacLean. The court finding that the defendant did not answer and the time for answer has passed, and that the Trustee has presented adequate testimoney regarding entry of a judgment, it is HEREBY ORDERED that the defendant is in default; it is FURTHER ORDERED that interest of Errol Richard McRill in the proceeds of sale of the property co-owned by the debtor and McRill located at 4800 Thunderbird, Eugene Oregon **is zero**

Dated this **3 day of August, 1999** /s/ stamped Samuel J Steiner
United States Bankruptcy Judge
Hon. Judge Samuel Steiner

Filed
Sept 8, 1999
U.S. Bankruptcy Court

Chapter 7.
Sept 8,1999, 1:15p.m.at Evertt

Diana K Carey, WSBA 16239
Karr Tuttle Campbell
1201 Third Ave.Suite 2900
Seattle, WA 98101-3028
(206) 223-1313
Attorney for Merrilee A. MacLean

2nd File Stamp
Sept. 20, 1999
U.S. Bankruptcy Court

UNITED STATES BANKRUTPCY COURT
WESTERN DISTRICT OF WASHINTON AT SEATTLE

In re	)
LINDA L. FOGH	) Case No. 99-00251
Debtor	)**ORDER APPROVING**
_____	) **COMPROMISE WITH BRUCE NEWTON**

THIS MATTER came on before the court on September 8, 1999 on the motion of Merrilee A. MacLean, the Chapter 7 Trustee ("Trustee") of the bankruptcy estate of Linda Fogh, for an Order Approving Compromise with Bruce W. Newton. The court having reviewed the Motion and there being no objections, or the objections being overruled, and the compromise appearing to be in the interest of creditors, no, therefore, it is hereby

ORDERED that the Trustee's Motion is approved, and the Trustee is authorized to disburse from proceeds of the sale of the Debtor's real property in Oregon the sum of $12,500.00 to Bruce W. Newton and the firm of Henderson & Bromley within ten (10) days of entry of this Order.

DATED this 8 day of September, 1999.

/s/ Samuel J. Steiner
UNITED STATES BANKRUTPCY JUDGE

Presented by:
KARR TUTTLE CAMPBELL
By: /s/ Diana K. Carey
Diana K. Carey WSBA # 16239
Attorneys for Trustee Merrilee A. MacLean

Filed
Oct 1, 1999
U.S. Bankruptcy Court

Hon. Judge THOMAS GLOVER
Chapter 7.

UNITED STATES BANKRUTPCY COURT
WESTERN DISTRICT OF WASHINTON AT SEATTLE

In re	)
LINDA L. FOGH	) Case No. 99-00251
Debtor	) **ORDER AUTHORIZING**
	) **PAYMENT AND CLOSING**
	) **ADVERSARY PROCEEDING**
	) **A99-07468 (AMENDED TO**
_____	) **CORRECT ADV. PRO. NO.)**

THIS MATTER came on before the Court on shortened time on October 1. 1999, on the Trustee's Motion for an Order Authorizing Payment to Bruce Newton and Closing Adversary Proceeding. There being no objections, and the court finding that the Debtor appealed the prior order authorizing payment but neither posted bond nor moved to stay the proceeding, it is hereby

ORDERED that the Trustee shall promptly pay the settlement amount of $12,500 to Bruce W. Newton the firm of Bromley & Henderson; it is

FURTHER ORDERED that Adversay Proceeding A99-07468, MacLean v. McRill and Newton, shall be CLOSED, and the Clerk's Office is instructed to note this on the docket.

DATED this 1 day of October, 1999.

/s/ Thomas T. Glover
UNITED STATES BANKRUTPCY JUDGE

Presented by:
KARR TUTTLE CAMPBELL
By: /s/ Diana K. Carey
Diana K. Carey WSBA # 16239
Attorneys for Trustee Merrilee A. MacLean

Hardy Meyers
Attorney General
Susan Egnor #9255)
Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem OR 97310-7734
Attorneys for Defendants Lane County Circuit Court, and for Judges Kip Leonard, Pierre Van Rysselberghe, Ann Aiken,Jack Mattison, Alta Brady, Maurice Merten, Ted Carp, and David Brewer

Filed
US Bankruptcy Court
Western District of Washington
at Seattle
August 20, 1999
Thomas T. Glover
Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:	)Chapter 7
LINDA L. FOGH,	)
Debtor	) No. 99-00251
LINDA L. FOGH	) Adversary
Plaintiff,	) Proceeding
v.	) No.A99-06871
CIRCUIT COURT FOR COUNTY OF	)
LANE, OREGON, THE HONORAABLE	)
JUDGE KIP LEONAARD, THE HONORABLE	)
JUDGE PIERRE VAN RYSSELBURGHE,	) **ORDER**
THE HONROABLE JUDGE JACK MATTISON,	) **GRANTING**
THE HONORABLE JUDGE ALTA BRADY,	) **MOTION TO**
THE HONORABLE JUDGE MAURICE MERTEN	) **DISMISS**
THE HONORABLE JUDGE TED CARP, THE	)
HONORABLE JUDGE DAVID V. BREWER;	)
DANIEL LINDAHL,Attorney at Law OSB 84276	)
LEE OMLID OSB Attorney at Law 74240;	)
LISA GALL, (sic) Attorney at Law OSB 90055;	)
BRUCE NEWTON Attorney at Law, OSB 80325;	)
JOHN HENDERSON Attorney at Law OSB 76169;)	
WILLIAM BROMLEY Attorney at Law OSB 74043)	
JAMES JAGGER, Attorney at Law OSB 70070 and	)
ERROL R. MCRILL	)
Jointly and individually, Defendants	) (Item no) 44

On August 13, 1999, the court considered motions to dismiss filed by defendants State of Oregon for the Circuit Court of Lane County, Kip Leonard, Pierre Van Rysselberghe, Ann Aiken, Jack Mattison, Alta Brady, Maurice Merten, Ted Carp, and David Brewer (Oregon State Defendants); by Daniel Lindahl, Lee Omlid, Lisa Gallo, Bruce Newton, John Henderson, and William Bromley jointly and by James Jagger. The Oregon State defendants appeared by their attorney, Assistant Attorney General Susan T. Egnor, Larry Feinstein appeared for the joint movants, and James Jagger appeared by his attorney, Brian D. Lynch. Plaintiff Linda L. Fogh appeared on her own behalf.

The court considered all the written submissions of the parties and heard the argument of counsel and of plaintiff. The court entered its oral opinion, a copy of which is attached hereto and made a part hereof. The court having determined that all motions to dismiss should be granted, the court hereby makes the following

FINDINGS OF FACT AND CONSLUSTIONS OF LAW

1.The State of Oregon has not consented to the jurisdiction of this court.

2.With respect to the State of Oregon, the judicial officers acting within their authority as judges, this court has no jurisdiction.

3.Plaintiff is barred from litigating the issues she presents because they have already been raised and resolved in other courts.

4.Because plaintiff has already raised these issues in other courts, her attempt to do so again in this court is frivolous.

Based upon the foregoing, it is hereby

ORDERED that defendants' motions to dismiss are hereby granted and this matter be and hereby is dismissed with prejudice.

IT IS FURTHER ORDERED that, except for pleadings necessary for any appeal of this order, that plaintiff may not file additional pleadings in this bankruptcy case in this court without first applying for and obtaining the court's permission to do so.

DATED **this 20 day of August, 1999** /s/ THOMAS T. GLOVER

United States Bankruptcy Judge

Presented by /s/ Susan T. Egnor #9255
Assistant Attorney General Of Attorneys for Oregon State Defendants, and /s/ Larry Feinstein #6074
Larry Feinstein Attorney for (indecipherable) Defendants

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINTON
AT SEATTLE

In re LINDA L. FOGH Debtor	Chapter No. 7 Case No. 99-00251
LINDA L. FOGH, Plaintiff, vs. CIRCUIT COURT FOR COUNTY OF LANE, OREGON et al, Defendants	 Adversary No. A99-06871

TRANSCRIPT OF THE ORAL RULING ON MOTION BY THE HONORABLE THOMAS T. GLOVER
FRIDAY, AUGUST 13, 1999

Reported by: Judith Cederblom
Certified Court Reported
CCR# CEDER * J576JW

APPEARANCES

For the Debtor Pro se:	MS. LINDA L. FOGH 220 SW CLARK ST. B-304 ISSAQUAH, WA 98027 (425) 427-1426
For Defendant Lane County Oregon, Oregon	MS. SUSAN T. EGNOR Assistant Attorney General Oregon Dept of Jusitce

Civil Recovery Section
Civil Enforcement Divison
1162 Court Street NE
Salem, OR 97310
(503) 373-7734

For Defendants Daniel Lindahl, Lee Omlid, Lisa Gallo, Bruce Newton, John Henderson, and William Bromley:

MR, LARRY FEINSTEIN
Attorney at law
Vortman & Feinstein
701 Fifth Avenue Suite 3210
Seattle, WA 98104
(206) 223-9595

For Defendant James Jagger

Mr. Brian Lynch
Attorney at Law
Bishop, Lynch & White
720 Olive Way, Suite 1600
Seattle, WA 98101-1801
(206) 622-5306

SEATTLE, WASHINGTON; FRIDAY, AUGUST 13, 1999
9:30 A.M. SESSION
--ooOoo--
(OTHER PROCEEDINGS WERE HAD ON THIS DAY BUT ARE NOT TRANSCRIBED AT THIS TIME)
*****

THE COURT: I'll grant all three motions for dismissal in this instance.

With regard to the State of Oregon and the judicial officers who are defendants, who were acting under their authority as judges, this Court has no jurisdiction. The State of Oregon under the seminal case had not taken any action to consent to jurisdiction, and this Court must respect that.

As far as all of the defendants, including the State and the judges, in one fashion or another all of the issues that are raised by the plaintiff here are resolved elsewhere.

MS. FOGH: They have not been resolved elsewhere.

THE COURT: It is my turn to talk now, Madam, and not yours. I sat by patiently here. I suspect this is going to be your attitude.

I'm going to try and at least explain my decision to you, but you don't agree with it, and that's been your problem. And let me tell

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(No page number)

you what problems you're experiencing that you're unwilling to accept.

First of all, you're entitled to one bite at the apple. You had that in the Courts of the State of Oregon. You did not agree with their decisions.

And you have a right not to agree with them, but as far as the law is concerned, you get one opportunity to present your position. And, that was considered in all of the Oregon litigation, and you lost.

Secondly, you are attempting to undertake a procedure that is totally inappropriate, and if it were allowed in American justice, there would be no decision-making going on. And that is, you are not in a position to sue a judge just because you disagree with their decision and feel that because you disagree with it, it's a denial of due process of law.

Third, appropriate disputes belong in appropriate courts. These are disputes that belong in the State Courts of Oregon, they are State issues, and that's where they belong. If you are going to prevail, you are going to prevail through their system.

Page. 5.

To the degree that there might be some dispute involving Federal Law and Federal Civil Rights Law, more than likely that jurisdiction is vested not here but in Oregon Federal Courts, if it hasn't already been decided.

And you've been fishing around for various courts that might hear things that you have already had decided by other jurisdictions, and you have not prevailed in those matters.

MS. FOGH: You - -

THE COURT: And I will dismiss your cases, and I will also, because I can tell by your attitude, bar you from filing any other pleadings before this Court except such actions as you may wish to file with respect to the appeal of my decision here today, but I don't want to see a pound of paper from you as in the past.

And in order to have leave to file that with this Court for me to consider other matters -- other than, as I say, the appeal of my decision, which you have a right to pursue -- that can only be done by my order, so you have to apply to do that.

Because you're causing a lot of people to spend a lot of time on what amount to frivolous matters at this point in time because

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they have already been considered.

Ms. Egnor, I'd ask that you be lead counsel in preparing an appropriate order of dismissal of these matters; that they be presented next Friday at 9:30.

MS. EGNOR: Thank you, Your Honor.

(THE PROCEDINGS IN THIS MATTER WERE CONCLUDED.)

CERTIFIECATE

I, Judith Cederblom, hereby certify that:

The forgoing pages represent an accurate and complete transcription of the ruling by The Honorable U.S. Bankruptcy Judge presiding in the aforementioned matter, and that these pages constitute the original or a true copy of the transcript of the ruling. by: (not signed)

JUDITH CEDERBLOM

Certified Court ReporterCCR # CEDER*J576

FEB 20 2000
At Seattle
Clerk of the District Court
Western District of Washington
/s/"P" Deputy

UNITED STATES DISTRICT COURT
WESTERN DISSTRICT OF WASHINGTON AT SEATTLE

LINDA L. FOGH, Debtor, Appellant,	)	No. C99-1427P
LINDA L. FOGH Debtor, Appellant.	)	ORDER AFFIRMING
v.	)	DECISION OF THE
CIRCUIT COURT FOR COUNTY OF LANE, OREGON, et al., Appellees.	)	BANKRUPTCY COURT

This matter came before the court on appeal from the Bankruptcy Court's order dismissing the adversary proceeding filed by Linda L. Fogh against the Circuit Court for Lane County Oregon; the Honorable Judge Kip Leonard, the Honorable Judge Pierre Van Rysselburghe, the Honorable Judge Ann Aiken, the Honorable Judge Jack Mattison, the Honorable Judge Alta Brady, the Honorable Judge Maurice Merten, the Honorable Judge Ted Carp, the Honorable Judge David V. Brewer (together, "the individual judges"); Daniel Lindahl, Lee Omlid, Lisa Gall, (sic) Bruce Newton, John Henderson, William Bromley, James Jagger (together, "the attorneys"); and Errol McRill. Ms. Fogh argues that the Bankruptcy Court erred in dismissing her claims against the defendants, and asserts numerous violations of her constitutional and statutory rights. Having reviewed the briefs by the parties and all relevant materials, this court AFFIRMS the Bankruptcy Court's order dismissing this matter with prejudice.

As to the Circuit Court for Lane County, this court finds that the Bankruptcy Court for Lane County is a party of the Oregon Judicial Department and is a State agency. ORS 1.001. See also Franceschi v. Schwartz, 57 F3d 828,831 (9th Cir. 1994). By suing the Circuit Court, Ms. Fogh is suing the State of Oregon. Such an action is plainly barred by the Eleventh Amendment to the United

States Constitution. U.S. Const. Amend. XI ("The Judicial power of the United States Constitution. U.S. Const. Amend XI ("the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."). The Bankruptcy Court correctly concluded that because the State did not consent to be sued in federal court, it has no jurisdiction over Ms. Fogh's claims against the Circuit Court. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 100, 104 S.Ct. 900, 79 L.Ed. 2d 67 (1984).

This court also affirms the Bankruptcy Court's dismissal of all claims brought against the individual judges named as defendants in this action. The acts complained of by Ms. Fogh occurred when the judges were acting in their official capacity as judicial agents of the State. Ms. Fogh has not demonstrated that any of the individual judges are absolutely immune from this lawsuit. See Stump v. Sparkman, 435 U.S. 349,363, 98 S.Ct. 1099, 55 L.Ed. 2d 331 (1978).

Further, this court agrees that Ms. Fogh is attempting to litigate issues that were already raised and resolved by other courts. A federal court is required to give a state court judgment the same preclusive effect that would be granted to the judgment in the state's own courts. Clements v. Airport Authority of Washoe County, 69 F.3d 321, 328 (9th Cir. 1995).

In Oregon:

> A plaintiff who has prosecuted one action against a defendant through to a final judgment binding on the parties is barred on res judiciata grounds from prosecuting another action against the same defendant where the claim in the second action is one which is based on the same factual transaction that was at issue in the first, seeks a remedy additional or alternative to the one sought earlier, and is of such a nature as could have been joined in the first action.

Rennie v. Freeway Transport, 294 Or. 319,323,656 P.2d 919, 921 (1982).

Ms. Fogh's claims in this action are all based upon the dissolution of her partnership with Defendant Errol McRill and the litigation that resulted from the dissolution. The claims raised before the Bankruptcy Court are virtually identical to those brought by Ms.

Fogh in her case against the same defendants before the Lane County Circuit Court, Case No. 16-98-13186. Contrary to Ms. Fogh's assertions, the Lane County Circuit Court did consider the merits of her claims when it granted the defendant's motions to dismiss. This court agrees with Bankruptcy Court's conclusion that Ms. Fogh's claims against all defendants named in this action have been addressed and resolved by the state courts of Oregon. Ms. Fogh's claims are therefore barred by res judicata.

This court is convinced that the Bankruptcy Court for the Western District of Washington properly dismissed this action against all defendants. Accordingly, the order of dismissal is AFFIRMED.

Filed and entered this 20 day of February, 2000.

/s/ Marsha J. Pechman
Marsha J. Pechman
U.S. District Court Judge

NOT FOR PUBLICATION

FILED
SEP. 26 2000
CATHY CATTERSON , CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: LINDA L. FOGH, Debtor	)	No. 0035213
	)	
	)	D..C.No. CV 99-01427-MP
	)	
LINDA L. FOGH, Appellant-Appellant,	)	**MEMORANDUM**[1]
v.	)	
LANE COUNTY CIRCUIT COURT, Oregon; LEE OMLID; LISA GALLO; BRUCE NEWTON; JOHN HENDERSON; WILLIAM BROMLEY; DANIEL LINDAHL; JAMES JAGGER; ERROL R. McRILL; KIP LEONARD; PIERRE VAN RYSSELBERGHE, Honorable Judge; ANN AIKEN, Honorable Judge; ALTA BRADY, Honorable Judge; MAURICE MERTEN, Honorable; TED CARP, Honorable; DAVID V. BREWER, Appellees-Appellees.	)	

Appeal from the United States District Court
For the Western District of Washington
Marsha J. Pechman, District Judge, Presiding
Submitted September 11, 2000[2]

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.
[2] The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App P.34(a)(2).

Before: WALLACE, FERNANDEZ, AND McKEOWN, Circuit Judges.

Linda L. Fogh appeals pro se the district court's judgment affirming the bankruptcy court's order dismissing Fogh's adversary proceeding alleging that defendants violated her constitutional rights in prior state court proceedings. We have jurisdiction under 28 U.S.C. §158(d). We review the bankruptcy court's dismissal de novo without deference to the district court's decision, see *Levin v. Maya Contr. (In re Maya Constr. Co.)*, 78 F3d 1395, 1398 (9th Cir. 1996), and we affirm on alternative grounds contained in the record, see *Branson v. Nott,* 62 F3d 287, 291 (9th Cir. 1995).

Because the court lacked jurisdiction to review Fogh's collateral attacks on her prior state court judgment, the court properly dismissed Fogh's action. *See id.* 291-92.

In any event, because the Lane County Circuit Court was entitled to Eleventh Amendment immunity, see Franceschi v. Schwartz, 57 F.3d 828, 831 (9th Cir. 1995) (per curiam), and because the individual judges were entitled to judicial immunity, see Ashelman v. Pop, 793 F2d 1072, 1075 (9th Cir. 1986) (en banc), the court properly dismissed Fogh's action against those defendants, Furthermore, we agree that the claims against the remaining defendants are barred by the doctrines of res judicata and collateral estoppel. See Robi v. Five Platters, Inc. 838 F 2d 318, 321-22 (9th Cir. 1988).

AFFIRMED

(Fogh Recd. Nov. 14, 2000)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: LINDA L. FOGH, Debtor	)	No. 0035213
	)	
	)	D..C.No. CV 99-01427-MP
LINDA L. FOGH, Appellant-Appellant, v.	)	**ORDER**
LANE COUNTY CIRCUIT COURT, Oregon; et al Appellees-Appellees	)	

Before: WALLACE, FERNANDEZ, and McKEOWN, Circuit Judges.

The panel voted to deny appellant's petition for panel rehearing. Judges Fernandez and McKeown have voted to deny appellant's petition for hearing en banc, and Judge Wallace so recommends.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings shall be accepted in this closed appeal.

S:/Pfr.memos/00-35213.wpd

FILED
) FILED \ ENTERED
APRIL 24, 2000
AT SEATTLE
CLERK OF U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY /S/ (UNDECIPHERALBE) DEPUTY

In re: LINDA L. FOGH, Debtor, Appellant	))) D.C.No. CV 99-00128 P)
LINDA L. FOGH, Debtor, Appellant,	)) **ORDER**) **GRANTING MOTIONS**) **TO DISMISS**) **CASES**) CV 99-00142 P

This matter came before the Court on Trustee Merrilee MacLean's motions to dismiss. The Trustee argues that the Debtor Linda L. Fogh has no standing to challenge the Bankruptcy Court's order disallowing and allowing claims on her estate. Additionally, MacLean argues that Ms. Fogh cannot challenge the order denying her own claims on the estate, because a debtor has no legal basis for asserting a claim in her own bankruptcy. Ms. Fogh opposes the motions to dismiss.

These cases represent the fourth and fifth bankruptcy appeals brought before this Court by Ms. Fogh. See In re Linda L. Fogh v. MacLean C99-1655P; In re Linda Fogh v. MacLean C99-1749P; Linda Fogh v. Circuit Court for County of Lane, Oregon, et al, C-99 1427. This Court is therefore well acquainted with the underlying disputes relevant to the actions currently before it. Because Ms. Fogh objections to the Bankruptcy Court's orders disallowing claims on her bankruptcy estate raise larger issues relevant to Ms. Fogh's entire Chapter 7 Bankruptcy, the Court will set forth relevant background facts below.

Ms. Fogh entered into a partnership agreement with Errol McRill in 1993. Fogh v. McRill, 153 Or App. 159 956 P2d. 236 (Or. Ct. App. 1998). The agreement referred to the joint purchase of a house and the resulting financial obligations. Id. Ms. Fogh later sued Mr. McRill to dissolve the partnership and to recover damages

for Mr. McRill's alleged breach of the partnership agreement. Id. Ms. Fogh also sought to have Mr. McRill repay loans made to him by her, and to recover personal property allegedly converted by McRill. Id. Mr. McRill counter-claimed for damages arising out of Ms. Fogh's alleged breach of the partnership agreement, and filed a separate action seeking damages for Fogh's alleged conversion. Id.

The trial court found both parties had materially breached the partnership agreement, and ordered that the home be sold. Id. The court also entered judgment for some of Ms. Fogh's claims for loaned to Mr. McRill, and entered judgment for Mr. McRill for damages resulting from the breach of the agreement and for conversion. Id.

Fogh appealed, and the Court of Appeals affirmed the trial court's conclusion that Fogh materially breached the partnership agreement, the denial of Fogh's claim for an additional $7,000 in loans made to Mr. McRill, and the award of motel expenses to Mr. McRill. Id. At 165-166, 168. The Court of Appeals reversed the trial court's award of damages on McRill's conversion claim, concluding that Fogh's interference with McRill's property did not amount to conversion. Id. At 167. The Court of Appeals remanded for entry of amended judgment. Id. At 168. The Oregon Supreme Court denied Ms. Fogh's petition for review.

Linda Fogh then filed for Chapter 7 Bankruptcy in January 1999, and Merrilee MacLean was appointed Chapter 7 Trustee. Over Ms. Fogh's objections, the Bankruptcy Court granted Trustee MacLean's motion to abandon several causes of action to the debtor. These causes of action included: Ms. Fogh's suit against the Circuit Court for Lane County Oregon and Several judges for conspiring to violated her civil and constitutional rights. Ms. Fogh's appeal of the denial of writs of mandamus in her action against the Lane County Circuit Court and judges; and Ms. Fogh's appeal to the Ninth Circuit of the order denying her removal of actions against Bruce Newton (her attorney in the partnership dissolution) and Errol McRill. The court agreed with the Trustee's determination that the lawsuits were burdensome and of inconsequential value and benefit to the estate pursuant to 11 U.S.C. §554. Ms. Fogh did not appeal the Bankruptcy Court's order of abandonment, and the causes of action were abandoned back to the debtor on May 12, 1999.

In June 1999, MacLean initiated an Adversary Proceeding against Errol McRill and Bruce Newton, seeking to determine the validity, priority, and extent of the liens and other interests in the proceeds of Fogh's property. The trustee entered into a settlement agreement with Newton, and the Bankruptcy Court approved the settlement over Ms. Fogh's objections. Fogh appealed this order. After Ms. Fogh failed to stay the court's order and failed to file a bond, the Trustee sought court approval authorizing the payment to Mr. Newton. The Bankruptcy Court then entered an Order Authorizing Payment. Fogh also appealed this order. This Court dismissed both of Ms. Fogh's appeals on the grounds that Fogh was not an aggrieved person with standing to challenge the Bankruptcy Court orders. See In re Linda Fogh v. MacLean; C99-1655P (W.D. Wash., Dec. 21, 1999).

Claim 11 (C00-142P):

In November 1999, the Trustee filed a Notice and Motion of Objection to Claim Number 11 of Errol R. McRill in the amount of $36,028.74. In her motion, the Trustee argued that Mr. McRill's claim was resolved in a prior adversary proceeding. Mr. McRill responded to the motion, arguing that he was entitled to a portion of the assets of Ms. Fogh's estate based upon the dissolution of his partnership with Ms. Fogh, in addition to the judgments resulting from the prior legal proceedings. In December 1999, the Bankruptcy Court upheld the Trustee's objection and entered an order disallowing claim 11. Decl.of Diana Carey, Ex 3. The court considered Mr. McRill's objection, Ms. Fogh was also present and objected to the order. Contrary to her assertions, the Bankruptcy Court order did not adjudicate any liens on her property. The court only entered an order disallowing Mr. McRill's claim on her estate. The court made no findings regarding the underlying dispute between Fogh and McRill, nor did the court discharge her bankruptcy without addressing the alleged fraud and impaired executory contract. The only matter before the Bankruptcy Court, and the only matter addressed in the order, was Mr. McRill's claims against her estate.

Because the Bankruptcy Court order addressed only Mr. McRill's claims on Ms. Fogh's bankruptcy estate, Ms. Fogh lacks standing to challege the Bankrutpcy Court order. A Chapter 7 debtor is an "aggrieved person with standing to pursue an appeal in

bankruptcy cases only if she is "directly and adversely affected pecuniarily by an order of the bankruptcy court." Fondiller v. Robertson, 707 F2d 441, 442(9th Cir. 1983). In other word, the order must "diminish the appellant's property, increase its burdens, or detrimentally affect its rights." In re P.R.T.C., Inc. 177 F3d 774m 777 (9th Cir.1999). Ordinarily, debtors cannot challenge a bankruptcy court's order unless there is likely to be a surplus after bankruptcy. Id. At 778 N.2.

This court find that Ms. Fogh is not an "aggrieved party" with standing to challenge the Bankruptcy Court's order disallowing claim 11. Fogh was not directly and adversely affected pecuniarily by the orders of the bankruptcy court. Mr. McRill's claim on her estate was disallowed, and the Bankruptcy Court made no findings regarding liens on Ms. Fogh's property.

Claims 6, 7, & 8 C00-128P):

The trustee also filed a motion to disallow claims 6,7, & 8 filed by debtor Linda Fogh in the amounts of $13,457,47, $21,622.90 and $1,515,309.00 Ms. Fogh objected to the motion to disallow her claims. Claims 6 and 7 dealt with Trustee's abandonment of several causes of action filed by Ms. Fogh. As to Claim 8, Fogh refers to this as a claim for the terms of an impaired executory contract. The Bankruptcy Court considered Fogh's objections, but granted the trustee's motion, and entered an order disallowing claims 6,7, & 8. 11 U.S.C. §101 (10)(A). By definition, Fogh was unable to assert claims against her own estate.

As to the underlying dispute regarding claims 6 and 7, Ms. Fogh appears to be challenging the abandonment of her causes of action by the Trustee. As noted above Ms. Fogh never appealed the order of abandonment under 11 U.S.C. §554. When a trustee abandons property that is "burdensome to the estate or that is of inconsequential value and benefit to the estate," that property then reverts back to the debtor as if no bankruptcy petition were filed. Abandonment does not determine or resolve conflicts regarding the validity of titles or liens in the debtor's property, nor does it affect Ms. Fogh's rights or ability to pursue those claims. This Court can find no evidence in the record before it that the Trustee somehow interfered with Ms. Fogh's ability to pursue the causes of action at issue.

As for her objection raised in claim 8, Ms. Fogh appears to be challenging the Bankruptcy Court's order denying her homestead exemption. The record suggests that the Bankruptcy Court's order denying the homestead exemption in July 1999 over Ms. Fogh's objections, and Ms. Fogh did not appeal this order. Having failed to appeal this order, Ms. Fogh can neither ask the Bankruptcy Court to revisit the issue in terms of a claim brought against her own estate, nor ask this Court to address an order not before it.

Bankruptcy is a statutory scheme, and bankruptcy courts are granted broad equitable powers. In re Reinertson, 241 B.R. 451, 455 (B.A.P. 9th Cir. 1999). However, bankruptcy courts can only use such powers to further the statutory scheme established by the Bankruptcy Code. Id. Throughout the course of this litigation, Ms. Fogh appears to be objecting to the Bankruptcy Court's failure to adjudicate matter that are neither properly before the Court, nor within the Court's jurisdiction. This Court further notes that many of the objections raised by Ms. Fogh, such as the alleged conspiracy by the Lane County Circuit Court and her contractual dispute with Mr. McRill, have been fully litigated and concluded in other courts.

Trustee's motions to dismiss are hereby GRANTED. Ms. Fogh lacks standing and legal authority to challenge the Bankruptcy Court's order allowing and disallowing claims on her bankruptcy estate. These matters are hereby dismissed with prejudice.

Filed and entered this **24 day of April, 2000**.

/s/ Marsha J. Pechman
Marsha J. Fechman
U.S. District Court Judge

Filed
FILED \ ENTERED
APRIL 24, 2000
AT SEATTLE
CLERK OF U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY /S/ (UNDECIPHERALBE) DEPUTY

In re: LINDA L. FOGH, Debtor, Appellant	)	No. 0035405
	)	
	)	D.C.No. CV 99-00128 MJP
	)	
LINDA L. FOGH, Debtor, Appellant,	)	**ORDER**
	)	**CONSOLIDATING**
	)	**CASES**
	)	CV 99-00142 MJP

This Court has reviewed the above captioned cases, and has determined that they involve different appeals arising out of the same bankruptcy. The debtor, Linda L. Fogh, challenges the Bankruptcy Court's orders disallowing several claims on her estate, and approving others. This Court has determined that the cases are related and should be consolidated. Therefore, the above captioned cases are hereby CONSOLIDATED and any future pleadings and documents filed in this matter shall include both case numbers listed above, and shall be filed in case number C00-128P. Consolidating these cases will facilitate any appeals, as the matter can be appealed using one record and paying one fee. This Court wishes to emphasize that this order of consolidation has no effect whatsoever on the merits of either of these actions.

Filed and entered this 24 day of April, 2000

/s/ Marsha J. Pechman
Marsha J. Pechman
U. S. District Court Judge.

Oct 19, 2000
CATHY CATTERSON, CLERK,
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: LINDA L. FOGH,	)	No. 0035405
Debtor	)	D.C.No. CV 99-00128 MJP
	)	CV 99-00142 MJP
LINDA L. FOGH,	)	Western Washington,
	)	(Seattle)
Appellant,	)	**ORDER**
v.	)	
MERRILEE A. MCLEAN, Chapter 7	)	
Trustee,	)	
Appellee	)	

Before Pregerson, Kleinfield and Gould, Circuit Judges

Appellee's opposed motion to dismiss this appeal for lack of juridiction is constructed as a motion to summarily affirm this district court judgment. So construed, a review of the record and appellant's opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. See United States v. Hooton, 693 F.2nd 857 (9th Cir. 1982) (per curiam)

Accordingly, we summarily affirm the district court's judgment.

All pending motions are denied as moot.

AFFIRMED

A True Copy
Cathy A. Catterson
Clerk of Court
Attest
Jan 5, 2001
/s/Donna M.Gilmore
Deputy Clerk

Dec 28, 2000
CATHY CATTERSON, CLERK,
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: LINDA L. FOGH, Debtor	) No. 0035405) D.C.No. CV 99-00128 MJP) CV 99-00142 MJP
LINDA L. FOGH, Appellant,	) Western Washington,) (Seattle)) **ORDER**
v.	)
MERRILEE A. MCLEAN, Chapter 7 Trustee, Appellee	)

Before: PERGERSON, KLEINFELD and GOULD, Circuit Judges

Appellant' petition for panel rehearing and for rehearing en banc is construed as a motion for reconsideration and petition for rehearing en banc of this court's October 18, 2000 order summarily affirming the district court's judgment. So construed, the motion for reconsideration is denied and the petition for rehearing en banc is rejected. See 9th Cir. R. 27-10; General Order § 6.11.

S:\MOATT\RECONMEM\12.00\pb\00-35405.wpd

ENTERED
APR 14, 2000
ON DOCKET

Filed
U.S. Bankruptcy Court
Western District of Washington
At Seattle
APR 14, 2000
Thomas Glover, Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTIRC OF WASHINGTON
AT SEATTLE

In re: LINDA L. FOGH, Debtor	)	No. 99-00251
	)	ADV. NO. 99-13239
LINDA L. FOGH, Plaintiff	)	**FINAL JUDGMENT OF**
v.	)	DISMISSAL
MERRILEE A. MCLEAN,aka BDL MACLEAN Chapter 7 Banrkruptcy Trustee, DIANA K. CAREY, WSBA #16239, KARR TUTTLE CAMPBELL, a law firm, KEY TITLE COMPANY, and H. DAVID MARTIN, and JOHN AND JANE DOE jointly and individually Defendants	)	

This Matter was set for trial on April 4, 2000, beginning at 1:30 p.m. Defendant Merrillee MacLean was represented by Lee, Smart, Cook, Martin & Patterson, Joel E. Wright. Defendants Diana Carey and Karr tuttle Campbell were represented by Karr Tuttle Campbell, Diana K. Carey. Defendants Key Title Company and H. Martin were represented by Sirianni & Youtz, Stephen J. Sirianni.

Plaintiff Linda Fogh did not appear, either personally or through an attorney or other representative. The Court waited until approximately 1:55 p.m., and caused the area around the Clerk's office to be searched to determine if Ms. Fogh was at the Clerk's office rather than in the courtroom. That search was unavailing.

This Court finds and concludes that dismissal of this matter is proper for any one of the following reasons, alone or in combination: (a) Ms. Fogh failed to appear at the trial of her own case; (b) Ms. Fogh failed to present evidence, either prior to trial or at the trial

itself, to support her factual averments; and (c) even if all of Ms. Fogh's factual averments are taken as true, Ms. Fogh fails to state any claims or causes of action upon which relief can be granted.

Further, this Court finds and concludes that: (a) Fs. Fogh's Amended Complaint in this matter, and all claims she has raised in this matter, are frivolous, groundless, and are not supported by existing law or any reasonable anticipatable (sic) extension of existing law; and (b) this case was commenced and prosecuted by Ms. Fogh in bad faith.

Finally, this Court finds that on April 4, 2000 at the time set trial, this Court set April 14, 2000 at 9:30 am., as the time for presentation of the judgment in this matter. Ms. Fogh was promptly and in writing notified of that setting, and of her right to appear and be heard. Ms. Fogh [appeared] [did not appear] (neither box is checked in the order) on April 14 at the presentation of this judgment.

Based upon the foregoing, it is HEREBY ORDERED, ADJUDGED and DECREED that:

1. This case, and all claims that Ms. Fogh asserted or could have asserted in it, should be and are hereby dismissed with prejudice.

2. Terms and sanctions shall be entered against Ms. Fogh, and in favor of each defendant as follows:

(a) In favor of defendant Merrilee MacLean, and against Linda Fogh, in the amount of **$ 0.**

(b) In favor of defendants Karr Tuttle Campbell and Diana K. Carey, and Against Linda Fogh, in the amount of **$ 6,589.97.**

(c) In favor of defendants Key Title Co. and H. David Martin and against Linda Fogh, in the amount of **$12,109.01**

3. This judgment disposes of all claims that were or could have been asserted in this case, is a final judgment, and there is no just reason for delay.

DATED this 14 day of April, 2000

/s/ Thomas T. Glover
United States Bankruptcy Court Judge

IN THE COURT OF APPEALS OF THE STATE OF OREGON

LINDA L FOGH, Plaintiff-Appellant,	)	Lane County Circuit
v.	)	Court No. 16-95-052218
ERROL R. McRill Defendant-Respondent.	)	CA A94266
----------	)	
ERROL R. McRill Plaintiff- Respondent.	)	Lane County Circuit Court No. 16-95-05220
v.	)	
LINDA L. FOGH, Defendant-Appellant	)	**ORDER DENYING RECONSIDERATION**

Respondent has moved to reconsider and set aside the portion of this court's decision awarding fees and costs to appellant. He argues that appellant failed to serve him with copies of the pleadings in support of that award. It appears from the copy of the returned receipt submitted by appellant that respondent did receive copies of those pleadings on **June 22, 1998**. Therefore, the motion is denied.

s/s Mary J. Deits
Chief Judge
APR - 1 - 1999

C: James C. Jagger
Linda L. Fogh

Replies should be directed to the State Court Administrator, Records Section, Supreme Court Bldg. 1163 State Street, Salem Or. 97310

(I gave J. Jagger timely notice for my costs and fees on June 22, 1998. Jagger filed his objections to my award on July 7, 1998. I gave immediate proof, but the Court did not sign this order for nearly nine months, and four months into my bankruptcy. In the meantime, Jagger got different signed order on Jan 11, 1999 and amended them several more times after my bankruptcy as late as Feb19, 1999.) Trustee abandoned the causes of action on April 12, 1999.) Linda L. Fogh January 18, 2001